

GROWTH MANAGEMENT HEARINGS BOARD  
CENTRAL PUGET SOUND REGION  
STATE OF WASHINGTON

NORTH CLOVER CREEK/COLLINS  
COMMUNITY COUNCIL, et al.,

Petitioners,

v.

PIERCE COUNTY,

Respondent,

and

CITY of SUMNER, JOHN MERRIMAN, and  
MARK BOWMER & BELINDA BOWMER,

Intervenors.

**CASE NO. 10-3-0003c**  
**(North Clover Creek)**

**FINAL DECISION AND ORDER**

**I. SYNOPSIS**

Three groups of Petitioners challenged various Comprehensive Plan amendments adopted by Pierce County Ordinance No. 2009-71s. In light of the County's 2007 Buildable Lands Report, which indicated the County's UGAs were substantially larger than required to accommodate the County's projected urban growth, the Board found UGA expansions contained in Amendments U-5 and U-8a non-compliant with RCW 36.70A.110, and inconsistent with the County's Comprehensive Plan. The UGA expansion in Amendment U-7, which involved a one-to-one exchange of rural for urban lands, was found compliant with the GMA and consistent with the Comprehensive Plan.

Amendment T-6, which revised the text of Comprehensive Plan policies and procedures for designating UGAs, was challenged as failing to prohibit conversion of agricultural lands to

1 urban. The Board determined that the challenge was timely but that Petitioner did not carry  
2 its burden of demonstrating non-compliance with the cited GMA provisions.

3  
4 Challenges to Amendments C-3 and U-8a alleged failure to protect rural character. The  
5 Board commended the County for its community plans which identify "local vision(s) of rural  
6 character," as contemplated by RCW 36.70A.011. The Board found Amendment C-3 did not  
7 comply with RCW 36.70A.070(5) in that it failed to protect the rural character defined in the  
8 Graham Community Plan. Amendment U-8a was inconsistent with Mid-County Community  
9 Plan requirements to provide a distinction between urban and rural areas.  
10

## 11 **II. PROCEDURAL BACKGROUND**

12  
13 Pierce County Ordinance No. 2009-71s, adopted November 24, 2009, made twenty-nine  
14 amendments to the Pierce County Comprehensive Land Use Plan and various subarea  
15 plans. Three petitions for review were timely filed with the Board, challenging six of the  
16 enacted amendments. At the prehearing conference, the petitions were consolidated and  
17 intervenors were admitted. The challenged amendments are referred to by the numbers and  
18 titles used by the County, and listed in the order in which they are decided here:<sup>1</sup>  
19

- 20 • Amendment U-7 Knox
- 21 • Amendment U-8a Merriman
- 22 • Amendment T-6 UGA Expansion Criteria
- 23 • Amendment U-5 Town of Eatonville
- 24 • Amendment C-3 Graham Community Plan - Signs.

25 Petitioners North Clover Creek/Collins Community Council and Audrey Chase (North Clover  
26 Creek) challenge only Amendment U-8a, which re-designated property from the rural area  
27 to within the boundaries of the Pierce County UGA. Petitioners James Halmo, William  
28 Rehberg, Diane Harris, and Marilyn Sanders, *pro se* (collectively, Halmo) challenge both  
29 Amendment U-8a and Amendment C-3, which allows electronic message boards in the  
30

31  
32 <sup>1</sup> Petitioner Futurewise and Respondent Pierce County have engaged in settlement discussions regarding one  
of the Amendments, M-23, that only Futurewise appealed. Amendment M-23 is the subject of a segregation  
and settlement extension order. Order Segregating and Granting Settlement Extension as to Futurewise Issue  
3 (May 11, 2020).

1 Graham area. Friends of Pierce County and Futurewise (Futurewise) challenge Amendment  
2 U-8a and also Amendments T-6 UGA Expansion Criteria, U-7 Knox, and U-5 Town of  
3 Eatonville.

4  
5 James and William Merriman and Mark and Belinda Bowmer intervened in support of the  
6 County on Amendment U-8a. The City of Sumner intervened in support of the County on  
7 Amendment T-6.

8  
9 On June 23, 2009, the Board convened the Hearing on the Merits at Silver Creek Fire  
10 Station in the Graham Community area.<sup>2</sup> Present for the Board were Board members  
11 Margaret Pageler and David Earling, with Board staff attorney Julie Taylor. North Clover  
12 Creek was represented by Keith Scully of Gendler & Mann LLP, with Audrey Chase in  
13 attendance. The four Halmo petitioners attended, and James Halmo served as their  
14 spokesperson. Futurewise was represented by its attorney Robert Beattey, with legal intern  
15 Alex Wilford. Pierce County was represented by Deputy Prosecutor Pete Philley,  
16 accompanied by several County staff members. John Merriman spoke for the intervenors  
17 on Amendment U-8a. Intervenor City of Sumner appeared through Jay Derr of GordonDerr  
18 LLP, with Sumner City Attorney Brett Vinson also attending. Christy Shephard of Byers &  
19 Anderson provided court reporting services.  
20  
21

22  
23 The hearing provided the Board an opportunity to ask questions clarifying important facts in  
24 the case and providing better understanding of the legal arguments of the parties.  
25

### 26 **III. JURISDICTION AND STANDARD OF REVIEW**

#### 27 **• Board Jurisdiction**

28 The Board finds that the Petitions for Review were timely filed, pursuant to RCW  
29 36.70A.290(2). The Board finds that Petitioners have standing to appear before the Board,  
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<sup>2</sup> Fire District 91, Silver Creek Station, 100212 187<sup>th</sup> Street East, Puyallup, WA 98357.

1 pursuant to RCW 36.70A.280(2). The Board finds that it has jurisdiction over the subject  
2 matter of the petitions pursuant to RCW 36.70A.280(1).

3  
4 • **Standard of Review**

5 The Growth Management Boards are tasked by the legislature with determining compliance  
6 with the GMA:

7       The Board is empowered to determine whether [county] decisions comply with  
8 GMA requirements, to remand noncompliant ordinances to [the county], and  
9 even to invalidate part or all of a comprehensive plan or development  
10 regulation until it is brought into compliance.

11 *Lewis County v. Western Washington Growth Management Hearings Board.*<sup>3</sup>  
12

13 The scope of the Board's review is limited to determining whether a jurisdiction has  
14 achieved compliance with the GMA only with respect to those issues presented in a timely  
15 petition for review.<sup>4</sup>  
16

17 The GMA creates a high threshold for challengers. A jurisdiction's GMA enactment is  
18 presumed valid upon adoption.<sup>5</sup> "The burden is on the petitioner to demonstrate that [the  
19 challenged action] is not in compliance with the requirements of [the GMA]."<sup>6</sup>  
20

21  
22 In *Swinomish Indian Tribal Community, et al. v Western Washington Growth Management*  
23 *Hearings Board*,<sup>7</sup> the Supreme Court summarized the Board's standard of review:

24       The Board is charged with determining compliance with the GMA and, when  
25 necessary, invalidating noncomplying comprehensive plans and development  
26 regulations. The Board "shall find compliance unless it determines that the  
27 action by the state agency, county or city is clearly erroneous in view of the  
28 entire record before the board and in light of the goals and requirements of  
29 [the GMA]." RCW 36.70A.320(3). An action is "clearly erroneous" if the Board  
30 is "left with the firm and definite conviction that a mistake has been

31 <sup>3</sup> 157 Wn.2d 488 at 498, fn. 7, 139 P.3d 1096 (2006).

32 <sup>4</sup> RCW 36.70A.290(1).

<sup>5</sup> RCW 36.70A.320(1).

<sup>6</sup> RCW 36.70A.320(2).

<sup>7</sup> 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007) (internal case citations omitted).

1 committed.” “Comprehensive plans and development regulations [under the  
2 GMA] are presumed valid upon adoption.” RCW 36.70A.320(1). Although  
3 RCW 36.70A.3201 requires the Board to give deference to a [jurisdiction], the  
4 [jurisdiction’s] actions must be consistent with the goals and requirements of  
5 the GMA.

6 As to the degree of deference to be granted under the clearly erroneous standard, the  
7 *Swinomish* Court stated:<sup>8</sup>

8 The amount [of deference] is neither unlimited nor does it approximate a  
9 rubber stamp. It requires the Board to give the [jurisdiction’s] actions a “critical  
10 review” and is a “more intense standard of review” than the arbitrary and  
11 capricious standard.

12 “A board’s order must be supported by substantial evidence,” and the evidence must be of  
13 sufficient quantity “to persuade a fair-minded person of the truth or correctness of the order.”  
14 *Thurston County v Western Washington Growth Management Hearings Board*.<sup>9</sup> Thus, in the  
15 recent Court of Appeals decision in *Suquamish Tribe et al v Central Puget Sound Growth*  
16 *Management Hearings Board*,<sup>10</sup> the Division II Court of Appeals repeatedly admonished this  
17 Board for deferring to the county on issues that were not supported by substantial evidence  
18 in the county’s record.  
19

#### 20 21 IV. PRELIMINARY MATTERS

##### 22 • Hearing on the Merits Exhibit

23 At the Hearing, Intervenor Merriman provided the Board and all parties copies of his  
24 “Talking Points.” Without objection, the “Talking Points” were received and are designated  
25 Hearing on the Merits Exhibit No. 1.  
26

27 Other papers distributed by parties during oral argument were copies of materials already in  
28 the record and were not separately designated as exhibits.  
29  
30

31  
32 <sup>8</sup> *Id.* at 435, fn. 8 (internal citations omitted).

<sup>9</sup> 164 Wn.2d 329, 341, 190 P.3d 38 (2008)

<sup>10</sup> No. 39017-5-II (July 7, 2010)

1       • **Abandoned Issues**

2 North Clover Creek made no arguments in its Prehearing Brief concerning Legal Issue NCC  
3 1.g.<sup>11</sup> Legal Issue 1.g is deemed abandoned and is dismissed.

4  
5 Other abandoned issues are noted below in the footnotes following cited Legal Issues. The  
6 Board's Rules of Practice and Procedure provide: "Failure by [a petitioner] to brief an issue  
7 shall constitute abandonment of the unbriefed issue."<sup>12</sup> Also, the Board has stated,  
8 "Inadequately briefed issues would be considered in a manner similar to consideration of  
9 unbriefed issues and, therefore, should be deemed abandoned."<sup>13</sup> Further, the Board has  
10 held, "An issue is briefed when legal argument is provided; it is not sufficient for a petitioner  
11 to make conclusory statements, without explaining how, as the law applies to the facts  
12 before the Board, a local government has failed to comply with the Act."<sup>14</sup>

13  
14  
15 In the present case, Futurewise in particular has listed numerous GMA Planning Goals in its  
16 Legal Issues but referred to them, if at all, in summary sentences in its prehearing brief.  
17 The Board deems Futurewise's challenge to the County's compliance with these Goals to  
18 be **abandoned**.

19  
20       • **Objections to Exhibits**

21 The County in its Prehearing Brief moved to exclude two exhibits offered by Halmo:<sup>15</sup>  
22 Exhibit 52, which lists locations along one arterial where electronic message boards might  
23 be allowed under Amendment C-3; and Exhibit 56, which summarizes relevant information  
24

25  
26  
27 <sup>11</sup> **NCC 1.g.** Is the challenged action in violation of, or inconsistent with, previous GMA Board decisions against  
28 Pierce County, including the *Brink* case, 02-3-0010c, in that the County's action is inconsistent with the *Brink*  
29 decision, including the fact that the 5.2 acre UGA amendment will be zoned Residential Resource within the  
MSF designation, but is not part of a large unified critical area?

<sup>12</sup> WAC 242-02-570(1).

30 <sup>13</sup> *Sky Valley, et al., v. Snohomish County*, CPSGMHB Case No. 95-3-0068c, Order on Motions to Reconsider  
31 and Correct (Apr. 15, 1996), at 3.

32 <sup>14</sup> *Tulalip Tribes of Washington v. Snohomish County*, CPSGMHB Case No. 96-3-0029, Final Decision and  
Order (Jan. 8, 1997), at 7; *TS Holdings v Pierce County*, CPSGMHB Case No. 08-3-0001, Final Decision and  
Order (Sep. 2, 2008), at 7-8.

<sup>15</sup> County Response, at 15.

1 from the Wachtel traffic safety study.<sup>16</sup> At the Hearing on the Merits, the County also  
2 objected to Exhibit C filed with the Halmo Reply Brief, a memo from the County staff post-  
3 dating the adoption of Ordinance 2009-71s. Because the Board finds these exhibits are not  
4 necessary or of substantial assistance to the Board in its determination, as more fully  
5 indicated below in the Board's analysis of Legal Issue Halmo 2, the County's motion is  
6 **granted.**  
7

8  
9 • **Motions to Dismiss**

10 The County in its Prehearing Brief moved to dismiss portions of legal issues alleging:<sup>17</sup>

- 11 1. Violations of statutes other than the GMA  
12 2. Violation of "non-binding" sections of the GMA  
13 3. Violation of WACs  
14

15 Non-GMA Statutes

16 It is well-settled that the Board lacks jurisdiction to decide compliance or violation of any  
17 statute which is not expressly provided for in RCW 36.70A.280(1)(a). As the County's brief  
18 correctly states, "[a]lthough the Board may consider the common law, other state statutes  
19 and processes in determining GMA claims, it does not have jurisdiction to decide whether  
20 these 'other statutes' and common law, which are not specifically referenced in RCW  
21 36.70A.280(1) have been violated."<sup>18</sup> Further, briefing and argument before the Board  
22 should not rest on the meaning and application of non-GMA statutes.  
23

24 Here Legal Issue NCC 1.c references RCW 36.93.180, Boundary Review Board objectives,  
25 and Legal Issue Halmo 2.c references RCW 47.04.070, 47.42.020(7) and (8), 47.36.180,  
26 and WAC 468-66-050. Neither of these Legal Issues asserts "non-compliance" or "violation"  
27 of the non-GMA statute. Accordingly, in the analysis and conclusions below, the Board  
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31 <sup>16</sup> Wachtel, J. *Safety Impacts of the Emerging Digital Display Technology for Outdoor Advertising Signs*, Final  
32 Report, April 2009.

<sup>17</sup> County Response, at 16-21.

<sup>18</sup> County Response at 17, citations omitted.

1 considers the other statutes referenced by petitioners, where relevant. To the extent North  
2 Clover Creek or Halmo allege violation of these statutes, the allegations are **dismissed**.

3  
4 GMA Intent Section – RCW 36.70A.011

5 It is well-settled that statements of legislative intent, though codified in the statute, do not  
6 create enforceable mandates.<sup>19</sup> Here, Legal Issues NCC 1.c and NCC 1.f cite to RCW  
7 36.70A.011 – Findings – Rural Lands. In *Keesling v King County*,<sup>20</sup> the Board dismissed a  
8 legal issue which alleged violation of RCW 36.70A.011. The Board ruled that this section  
9 states legislative intent only and does not create an enforceable duty which is binding upon  
10 the County. *Keesling* was decided before the Supreme Court rulings in *Quadrant* and *City of*  
11 *Arlington*<sup>21</sup>, which the County relies on elsewhere in its brief for the proposition that the  
12 legislative intent articulated in Section .3201 of the GMA is a mandate that must be literally  
13 applied.<sup>22</sup> The Board reasons that, although legislative findings do not create independent  
14 legal obligations, they may provide important assistance to the Board and the parties in  
15 interpreting and applying the mandates of the statute. Thus, the Board looks to Section .011  
16 for *guidance* in the analysis of Legal Issues in this case. North Clover Creek’s allegations of  
17 *non-compliance* with Section .011 are **dismissed**.

18  
19  
20  
21 GMA Definition Section – RCW 36.70A.030

22 Like the “intent” and “findings” sections, the definitions in the GMA do not create  
23 independent duties.<sup>23</sup> The definitions *inform* the requirements of other sections of the  
24 statute. Legal Issues NCC 1.f and Halmo 1.d state legal issues challenging consistency with  
25 the definition of “rural character” in RCW 36.70A.030(15). The Board does not rule on  
26 compliance based on the definition, but based on the GMA *requirement* as informed by the  
27 definition. This is consistent with the Division II Court of Appeals analysis of the GMA Rural  
28

29  
30 <sup>19</sup> See, *Judd v AT&T*, 152 Wn.2d 195, 203 (2004); *Aripa v DSHS*, 91 Wn2d 135, 139 (1978).

31 <sup>20</sup> CPSGMHB Case No. 05-3-0001, Final Decision and Order (July 5, 2005), at 27.

32 <sup>21</sup> *Quadrant Corporation v Central Puget Sound Growth Management Hearings Board*, 154 Wn.2d 224, 238,  
110 P3d 1132 (2005); *City of Arlington v Central Puget Sound GMHB*, 163 Wn.2d 1016, 180 P3d 1291 (2008).

<sup>22</sup> County Response, at 12-15, discussing RCW 36.70A.3201.

<sup>23</sup> *Keesling v King County*, CPSGMHB Case No. 05-3-0001, Final Decision and Order (July 5, 2005), at 27.



1 Element requirements in *Suquamish Tribe v CPSGMHB*,<sup>24</sup> where the court went directly to  
2 the *definition* of rural character before discussing the *requirement* for a rural element that  
3 protects that character. To the extent North Clover Creek or Halmo allege violation of the  
4 *definition* independent of a concomitant requirement, the allegations are **dismissed**.  
5

6 GMA Planning Goals – RCW 36.70A.020

7 The County argues that the specific requirements of the Act are controlling and that the  
8 GMA goals set forth in RCW 36.70A.020 merely provide guidance for the development of  
9 comprehensive plans.<sup>25</sup> Thus the County moves to dismiss Legal Issues alleging non-  
10 compliance with GMA Planning Goals. Here, Legal Issues NCC 1.a, 1.d, and 1.f, Halmo 2.a  
11 and 2.b, and FW 1, 2, 3, and 4 assert violations of a range of GMA Goals, including Goals  
12 1, 2, 5, 8, 9, 10, 11, and 12.  
13  
14

15 Under the statute, the Board hears “petitions relating to whether or not an adopted  
16 comprehensive plan ... or permanent amendment thereto, is *in compliance with the goals*  
17 and requirements of the [GMA].”<sup>26</sup> Further, the Board’s deference to a county’s planning  
18 decisions is expressly conditioned on action “consistent with the requirements and *goals* of  
19 the [GMA].”<sup>27</sup> The courts have said that when there is a conflict between the “general”  
20 planning goals and more specific requirements of the GMA, “the specific requirements  
21 control.”<sup>28</sup> In the present case, neither the petitioners nor respondent are asserting conflicts  
22 between GMA goals and GMA requirements. Rather, Petitioners have alleged that non-  
23 compliance with certain GMA requirements also constitutes violation of related Planning  
24 Goals. Their “petitions relat[e] to whether or not [the challenged Amendments are] *in*  
25 *compliance with the goals and requirements* of the [GMA].”<sup>29</sup> None of the Legal Issues in  
26  
27  
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29 \_\_\_\_\_  
30 <sup>24</sup> Docket No. 39017-5-II (July 7, 2010) Slip Op. at 24-25.

31 <sup>25</sup> County Response, at 18-19, citing *Lewis County, supra*, 157 Wn.2d at 503-504, fn 12; *Quadrant Corp. v*  
32 *Central Puget Sound GMHB*, 119 Wn. App. 562, 575, 81 P3d 918 (2003).

<sup>26</sup> RCW 36.70A.290(2) [Emphasis added]

<sup>27</sup> RCW 36.70A.3201 [Emphasis added]

<sup>28</sup> See *Quadrant*, 119 Wn.App. at 575.

<sup>29</sup> RCW 36.70A.290(2) [Emphasis added]

1 question are stated to suggest that GMA goals have been violated in isolation from GMA  
2 requirements, nor are they argued as stand-alone issues in the briefs. Thus, in the analysis  
3 below, the Board reviews the issues to determine whether the County complied with GMA  
4 requirements and was guided by the corresponding goals.

5  
6 WAC Procedural Criteria.

7 The County moves<sup>30</sup> to dismiss portions of the Halmo Legal Issue which claim that the  
8 County failed to comply with provisions of WAC Chapter 365-195 – Procedural Criteria for  
9 Adopting Comprehensive Plans and Development Regulations.<sup>31</sup> Non-compliance with the  
10 WAC procedural guidelines is alleged in Legal Issues Halmo 1.a, addressing WAC 365-195-  
11 335 Urban Growth Areas; Halmo 1.c and 2.a, addressing WAC 365-195-330 Rural Element;  
12 and Halmo 2.c addressing WAC 365-195-325 Transportation Element.

13  
14  
15 These provisions are the “procedural guidelines” adopted by the Department of Commerce  
16 (formerly CTED) as recommendations and guidance to cities and counties planning under  
17 the GMA.<sup>32</sup> These guidelines are part of the technical assistance provided to local  
18 jurisdictions by Commerce. Compliance with the guidelines is not mandatory for cities and  
19 counties, as they may find other approaches to achieve compliance with the Act.<sup>33</sup> The  
20 Board has long held that the procedural guidelines are advisory only and do not impose an  
21 obligation on a city or county.<sup>34</sup> However, the Board is required to consider the procedural  
22 criteria in its review of a case,<sup>35</sup> so it is helpful to have the parties call attention to the  
23 relevant provisions.  
24  
25  
26  
27

28 <sup>30</sup> County Response, at 20-21.

29 <sup>31</sup> In February 2010, Commerce completed and officially adopted updates to the WAC’s Procedural Criteria.  
30 These procedures are now referenced under WAC 365-196.

31 <sup>32</sup> RCW 36.70A.190.

32 <sup>33</sup> WAC 365-196-030(2).

33 <sup>34</sup> *Master Builders Association v Snohomish County*, CPSGMHB Case No. 01-3-0016, Final Decision and  
34 Order (Dec. 13, 2001), at 7; *King County v Snohomish County*, CPSGMHB Case No. 03-3-0011I, Order on  
35 Reconsideration and Clarification (Dec. 15, 2003).

36 <sup>35</sup> WAC 365-196-030(3).

1 Accordingly, the Board looks to the WAC Procedural Criteria for *guidance* in the analysis of  
2 Legal Issues in this case. Allegations of *non-compliance* with sections of the WAC  
3 Procedural Criteria are **dismissed**.  
4

## 5 **V. THE CHALLENGED ACTION**

6 On November 24, 2009, the Pierce County Council passed Ordinance No. 2009-71s that  
7 amended Titles 19, 19A, and 19D, and Chapters 19B.40 and 19B.110 of Pierce County  
8 Code (**PCC**). In adopting Ordinance No. 2009-71s, the Pierce County Council made twenty-  
9 nine amendments to the Pierce County Comprehensive Land Use Plan and various subarea  
10 plans.  
11

12 The County's process for consideration of the proposed amendments began in January  
13 2009 and included numerous hearings and reviews.<sup>36</sup> The County's Planning and Land  
14 Services Department issued an integrated Staff Report and Draft Supplemental  
15 Environmental Impact Statement (**Staff Report**)<sup>37</sup> for the 2009 comprehensive plan  
16 amendments in July 2009, prior to the County Council beginning its hearings on the  
17 Amendments. The Staff Report contained a description and analysis of each of the  
18 appealed Amendments. Except in the few instances where the record contains substantial  
19 contrary evidence, the Staff Report provides the basis for the factual findings in the Board's  
20 decision.  
21  
22

23 Ordinance No. 2009-71s was adopted by the Pierce County Council on October 13, 2009.  
24 On October 28 the Ordinance was vetoed by the Pierce County Executive. The Executive's  
25 veto letter identified disagreement with Amendments T-6 and U-8a.<sup>38</sup> On November 24, the  
26 Pierce County Council overrode the Executive's veto, enacting the previously-adopted  
27 ordinance without change.  
28  
29  
30  
31

32 <sup>36</sup> The process is laid out in the chronology provided in County Response, at 5-12.

<sup>37</sup> The Staff Report and Draft Supplemental Impact Statement, July 20, 2009, is Exhibit PCC 99 or CP 685.

<sup>38</sup> Ex PCC 139.

1 Three petitions for review were timely filed and consolidated in this appeal. Five of the  
2 County's amendments are addressed in this Final Decision and Order. The Board addresses  
3 the issues in the following order:

- 4 • Amendment U-7 Knox
- 5 • Amendment U-8a Merriman
- 6 • Amendment T-6 UGA Expansion Criteria
- 7 • Amendment U-5 Town of Eatonville
- 8 • Amendment C-3 Graham Community Plan - Signs.

## 9 VI. LEGAL ISSUES AND ANALYSIS

### 10 • AMENDMENT U-7 (Knox)

11 Legal Issue FW 1 asserts that the County's adoption of Amendment U-7 violates RCW  
12 36.70A.110 and other provisions "by expanding the County's urban growth areas beyond  
13 that needed to accommodate the County's adopted population projection."<sup>39</sup> Amendment U-  
14 7 is challenged solely by Futurewise.

#### 15 Statement of Facts

16 By Amendment U-7, Pierce County adjusted the boundary of the UGA in the Mid-County  
17 area near the intersection of 116<sup>th</sup> Street East and Canyon Road East. Amendment U-7 re-  
18 designated 2.38 acres from Rural Separator (RSep) to Community Center (CC), which is the  
19 primary land use designation along this section of Canyon Road, and included this parcel in  
20 the UGA. At the same time, 2.37 adjacent acres were re-designated from CC to RSep and  
21 withdrawn from the UGA.<sup>40</sup> The parcel withdrawn is currently developed with one residence  
22 and a hobby farm; thus, its density and uses are consistent with the rural designation.  
23 Further, the parcel now designated rural contains wetlands that are part of an extensive  
24  
25  
26  
27

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28  
29 <sup>39</sup> FW 1. By adopting *Amendment Nos. U-7 and U-8* to Ordinance No. 2009-71s, and otherwise by expanding  
30 the County's urban growth areas beyond that needed to accommodate the County's adopted population  
31 projection, has Pierce County violated GMA Planning Goals 1, 2, 5, 9, 10, and 12 and GMA Sections .040,  
32 .070, .110, .115, and .130?

[Futurewise's allegations of non-compliance with GMA Sections .040, .130 and GMA Planning Goals  
1,2,5,9,10 and 12 were not argued in the prehearing brief with respect to Amendment U-7 and are deemed  
**abandoned.**]

<sup>40</sup> Staff Report, Ex. PCC 99, at 202-203.

1 wetlands complex to the south; a rural designation reduces development pressure on these  
2 critical areas.<sup>41</sup>

3  
4 Applicable Law

5 An Urban Growth Area is an area “within which urban growth shall be encouraged and  
6 outside of which growth can occur only if it is not urban in nature.”<sup>42</sup> The GMA provides that  
7 a UGA shall be designated to accommodate projected population growth:

8       Based upon the growth management population projection made for the county  
9       by the office of financial management, the county and each city within the  
10       county shall include areas and densities sufficient to permit the urban growth  
11       that is projected to occur in the county or city for the succeeding twenty-year  
12       period....<sup>43</sup>

13 In its seminal *Thurston County* decision, the Supreme Court held that a “UGA designation  
14 cannot exceed the amount of land necessary to accommodate the urban growth projected  
15 by OFM, plus a reasonable land market supply factor.”<sup>44</sup> Thus, the maximum size of the  
16 UGA is based on the OFM population projection.<sup>45</sup>

17  
18  
19 Three of the GMA Goals further define the objectives served by designation of Urban  
20 Growth Areas:

- 21       (1) Urban growth. Encourage development in urban areas where adequate public  
22       facilities and services exist or can be provided in an efficient manner.
- 23       (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land  
24       into sprawling, low-density development.
- 25       (12) Public facilities and services. Ensure that those public facilities and services  
26       necessary to support development shall be adequate to serve the development  
27       at the time the development is available for occupancy and use without  
28       decreasing current service levels below locally established minimum standards.

30  
31 <sup>41</sup> *Id.* at 203, 206.

32 <sup>42</sup> RCW 36.70A.030(20); RCW 36.70A.110(1).

<sup>43</sup> RCW 36.70A.110(2).

<sup>44</sup> *Thurston County*, 164 Wn.2d at 351-52.

<sup>45</sup> Pierce County has adopted OFM's mid-range population projection. 2007 Buildable Lands Report, at 5.

1 The Supreme Court in *Thurston County* emphasized the goal of reducing sprawl by limiting  
2 the size of UGAs: “If the size of a UGA is not limited, rural sprawl could abound.”<sup>46</sup>

3  
4 Discussion and Analysis

5 Futurewise contends that, because Pierce County’s UGA is substantially oversized, any  
6 change to Pierce County’s UGA boundary triggers a requirement to reduce the total size of  
7 the UGA.

8  
9 Pierce County’s UGA currently has substantial excess land capacity for its projected  
10 population and employment growth to the year 2022.<sup>47</sup> Futurewise summarizes this excess  
11 capacity, relying on the County’s Buildable Lands Report (BLR).<sup>48</sup> Pierce County’s BLR,  
12 updated in 2007, analyzes both residential housing needs and employment needs for the  
13 County and its cities and towns. Futurewise’s brief summarizes:

15 The BLR does, as the county staff note, bear out the point that the county’s UGAs  
16 are oversized overall. The report concludes that the collective “adopted urban  
17 growth area encompasses more area than necessary to accommodate the 2022  
18 urban population allocation and 2022 employment target for the County and its  
19 cities and towns.” The adopted population projection for the County as a whole in  
20 2022 translates to a need for 64,176 additional housing units. The housing  
21 capacity is 107,866, which results in a surplus capacity of 43,690. The adopted  
22 employment target is 324,625. This target was adopted by the Pierce County  
23 Regional Council and represents ESD covered employment, minus  
24 resource/construction jobs. The county’s employment capacity, as with housing,  
25 substantially exceeds this adopted projection, resulting in a surplus capacity of  
26 some 15,175 employees.

27 The BLR, having adopted these projections, observes that there is an “excess of  
28 dwelling units at approximately 68 percent”.... The County BLR concludes that  
29 the estimated employment capacity [land needed to be set aside to accommodate  
30 expected job growth] represents “an excess of approximately 12 percent of total  
31 needs.” This creates a substantial, GMA non-compliant surplus of land within the  
32 county’s UGAs because, again, land in the urban growth area for all uses –

---

<sup>46</sup> 164 Wn.2d at 351.

<sup>47</sup> Staff Report, Ex. PCC 99, at 211.

<sup>48</sup> 2007 Buildable Lands Report, Core Document B.

1 residential, commercial, industrial, and others – is constrained by the county  
2 population projections made by OFM.<sup>49</sup>

3 The County does not dispute this analysis, and the **Board takes the BLR findings as**  
4 **undisputed facts.**<sup>50</sup> Indeed, in recognition of this excess UGA capacity, the County has  
5 adopted Comprehensive Plan policies to forestall further urban sprawl. Thus, PCC  
6 19.C10.055 provides:  
7

8 F. Urban Growth Area Amendments. If the most recent Buildable Lands Report  
9 indicates that no additional residential land capacity is needed, any application  
10 requesting expansion of an Urban Growth Area shall include a companion  
11 application for reducing the Urban Growth Area in another location to ensure that  
12 the amount of residential land capacity is not increased.... The properties  
13 proposed for removal from the Urban Growth Area must be contiguous with the  
14 Urban Growth boundary and be rural in character with rural densities.

15 The Board finds the U-7 companion proposals are consistent with this Comprehensive Plan  
16 requirement. Amendment U-7 expands the UGA by 2.38 acres and removes an adjacent  
17 2.37 acres from the UGA. The UGA boundary is revised, but the amount of residential land  
18 capacity is not increased. Further, the land transferred into the rural area is rural in  
19 character.  
20

21 The U-7 parcels are within the Mid-County Community Plan area. The Mid-County Plan,  
22 adopted by Pierce County Council in 2005 as part of the Comprehensive Plan, also has  
23 policies allowing UGA boundary adjustments while preventing sprawl. The Mid-County Plan  
24 seeks to “preserve the natural, forested and pastoral character” of rural lands outside the  
25 urban growth area.<sup>51</sup> A “rural separator” designation is created “to protect rural lands from  
26  
27  
28  
29

30 <sup>49</sup> Futurewise Prehearing Brief, at 8, citations to BLR omitted.

31 <sup>50</sup> The County and Intervenor City of Sumner point out adjustments of the allocation of UGA lands may need to  
32 be considered in response to differential development patterns and opportunities in different parts of the  
County. They dispute some of Futurewise’s analysis of UGA population and employment capacity on a  
city/town and municipal UGA level.

<sup>51</sup> Staff Report, Ex. PCC 99, at 214.

1 continued urban-suburban sprawl” through a limited residential density of two-dwelling units  
2 per five acres.<sup>52</sup>

3  
4 The Mid-County Plan adopts a principle of “ensuring that there is no net loss of Rural  
5 Separator lands.”<sup>53</sup> The Plan states:

6 No net loss of Rural Separator lands shall occur after the adoption of the Mid-  
7 County Community Plan.<sup>54</sup>

8  
9 The Board finds the companion U-7 amendments are consistent with the Mid-County Plan  
10 “no net loss” standard in that land has been added to the Rural Separator equivalent to land  
11 removed for inclusion in the UGA.

12  
13 However, Futurewise reasons that any change to Pierce County’s UGA boundary opens the  
14 County to a requirement to size the UGA correctly, relying on the Supreme Court holding in  
15 *Thurston County* that “a UGA designation cannot exceed the amount of land necessary to  
16 accommodate the urban growth projected by OFM.”<sup>55</sup> Futurewise argues: “While [the U-7  
17 Amendment] represents a swap of land inside the UGA for land outside the UGA and vice  
18 versa, the simple fact is that Pierce County’s UGAs are oversized and the reduction in total  
19 area of UGAs, rather than a change which endeavors to maintain the oversized UGAs ... is  
20 what would have been compliant with the GMA.”<sup>56</sup>

21  
22  
23 The Board does not view the *Thurston County* holding as barring the County’s action here.  
24 Pierce County’s U-7 Amendment does not change the size of the UGA or alter the  
25 population or employment capacity. Amendment U-7 makes a size-neutral and capacity-  
26 neutral boundary adjustment, taking into appropriate consideration the rural-level of  
27 development on the parcel re-designated RSep. The “land swap” is also consistent with the  
28 County Comprehensive Plan and the Mid-County Community Plan. While different facts  
29

30  
31 <sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 215.

32 <sup>54</sup> *Id.*

<sup>55</sup> *Thurston County*, 164 Wn.2d at 351-52.

<sup>56</sup> Futurewise Prehearing Brief, at 7.



1 might require a different outcome, the Board is not persuaded that a mistake has been  
2 committed in this instance.

3  
4 **Conclusion**

5 The Board concludes that Petitioner Futurewise has not carried the burden of demonstrating  
6 that Amendment U-7 is non-compliant with RCW 36.70A.110 and .115 or inconsistent with  
7 the cited Comprehensive Plan provisions as required by RCW 36.70A.070(preamble). FW  
8 Legal Issue 1 as it relates to Amendment U-7 is **dismissed**.

9  
10 • **AMENDMENT U-8a**

11 Legal Issues NCC 1.a–f, Halmo 1.a-d, and FW 1 assert that the County’s adoption of  
12 Amendment U-8a (Merriman) violate various requirements of the GMA. All three of the  
13 Petitions for Review consolidated here challenge Amendment U-8a. Challenges range from  
14 public participation to UGA size, consistency with the Comprehensive Plan, community plan  
15 and county-wide planning policies, and provision of urban services.

16  
17  
18 Mr. Merriman and Mark and Belinda Bowmer<sup>57</sup> intervened in support of the County. The  
19 County deferred to Mr. Merriman for briefing and argument on Amendment U-8a, except  
20 concerning the public process.<sup>58</sup> Mr. Merriman, in his papers and his arguments at the  
21 hearing, gave a spirited and informative presentation of his efforts over a number of years to  
22 secure additional development opportunities for his property.<sup>59</sup>

23  
24 **Statement of Facts**

25 Amendment U-8a involves two parcels totaling 5.2 acres, re-designated from Rural  
26 Separator (RSep) to Residential Resource (RR) and brought into the Pierce County UGA.  
27 In January 2009, Intervenor Merriman submitted companion amendments for the County’s  
28 annual amendment process: U-8a proposed re-designating these parcels from rural to  
29  
30

31  
32 <sup>57</sup> The Bowmers own a portion of the property included in the U-8a amendment.

<sup>58</sup> County Response, at 65.

<sup>59</sup> Mr. Merriman’s speaking points at the hearing on the merits are HOM Ex. No. 1.

1 urban, and U-8b proposed re-designating another 9 acres from urban to rural.<sup>60</sup> U-8a and U-  
2 8b as companion amendments received thorough public review:

- 3 • by County Planning and Land Services Department staff, who recommended  
4 denial;<sup>61</sup>
- 5 • by the Mid-County Land Use Advisory Commission (LUAC), which voted to require  
6 Mr. Merriman to provide an alternate proposal showing no net loss of Rural Separator  
7 lands;<sup>62</sup>
- 8 • by the Growth Management Coordinating Committee of the Pierce County Regional  
9 Council, which voted unanimously to support the Staff recommendation of denial;<sup>63</sup>
- 10 • by Pierce County Regional Council, which on July 16 and again on September 17  
11 recommended denial on a vote of 9 to 8;<sup>64</sup>
- 12 • by the Planning Commission, which supported the Staff recommendation of denial.<sup>65</sup>

13  
14  
15 Early in this process, one of the urban property owners who had originally agreed to the U-  
16 8b re-designation into the rural area withdrew his consent.<sup>66</sup> U-8b was subsequently  
17 withdrawn but no new staff analysis was provided.  
18

19 Since Amendment U-8a was not part of the recommended draft Ordinance 2009-71  
20 forwarded to the Council by either the Planning Commission or the Pierce County Regional  
21 Council, the Amendment had to be reintroduced by a Council member in order to be  
22 considered formally by the Council. Amendment U-8a was re-introduced on September 8,  
23 2009, as a stand-alone addition to the UGA and was set for hearing before the Council's  
24 Community Development Committee on September 21.<sup>67</sup> The Community Development  
25  
26  
27

28  
29 <sup>60</sup> Staff Report, Ex. PCC 99, at 209.

30 <sup>61</sup> *Id.* at 217.

31 <sup>62</sup> Ex. CP 694.

32 <sup>63</sup> Ex. CP 682.

<sup>64</sup> Ex. PCC 91; CP 684.

<sup>65</sup> Ex. CP 697.

<sup>66</sup> County Response, at 7, para. 13.

<sup>67</sup> Merriman Brief, Ex. A-1

1 Committee approved Amendment U-8a as a stand-alone proposal on September 21.<sup>68</sup> The  
2 Mid-County LUAC also heard the stand-alone proposal in early October and recommended  
3 approval.<sup>69</sup> After final hearings on October 13, the County Council adopted Ordinance 2009-  
4 71s, including Amendment U-8a. The County Executive vetoed the Ordinance, citing  
5 concerns about Amendment U-8a.<sup>70</sup> On November 24, 2009, the County Council overrode  
6 the County Executive's veto.  
7

8 ***Did the County's adoption of Amendment U-8a violate GMA Public Process? NO***  
9

10 Legal Issue NCC 1.d contends that the County's adoption of Amendment U-8a failed to  
11 comply with the notice and public participation requirements of RCW 36.70A. 020(11), .035,  
12 .130, and .140, PCC19C.10.055, and County notice requirements.<sup>71</sup> North Clover Creek  
13 contends that Amendment U-8a was introduced and "summarily adopted" late in the  
14 County's process without public notice and opportunity for hearing. Petitioners argue that, as  
15 a stand-alone expansion of the UGA, Amendment U-8a was not within the scope of the prior  
16 companion amendments that would have swapped land in and out of the UGA.<sup>72</sup> The public,  
17 they argue, should have been provided with notice of the new proposal.  
18  
19  
20

21 <sup>68</sup> Ex. PCC 138.

22 <sup>69</sup> Merriman Brief, Ex. A-3.

23 <sup>70</sup> Ex. PCC 139: The Executive's veto message states:

24 "Amendment U-8a (Merriman) proposes to convert 5.2 acres of land from Rural Separator to Moderate Density  
25 single-Family. The original proposal included a companion amendment, as required by Section 19C.10.055F.  
26 In other words, for expansions of the urban growth area for residential lands when the existing UGA has  
27 excess capacity, a companion amendment with a commensurate reduction is required. The Council did not  
28 adopt the companion amendment, thus contradicting the procedures for amendments to the UGA. Also, the  
29 Mid-County Community Plan states to preserve the rural character in the community by ensuring there is no  
30 net loss of Rural Separator lands and specifies "no net loss" of Rural Separator lands shall occur after the  
31 adoption of the Mid-County Community Plan. Countywide Planning Policy UGA-2.2 states the designation of a  
32 UGA follow "geographic, topographic, and manmade features," such as road boundaries, not parcel  
boundaries. The approval of this amendment does not meet the spirit of this policy and would create a  
situation similar to "spot zoning," as the proposed UGA expansion area is on the opposite side of an arterial  
from other properties within the UGA."

<sup>71</sup> **NCC 1.d.** Did the County fail to comply with the notice and public participation requirements of RCW  
36.70A. 020(11), .035, .130, and .140, PCC19C.10.055, and County notice requirements when it suddenly and  
summarily adopted a substitute zone without compliance with Pierce County's "no net loss policy" for Rural  
Separator?

<sup>72</sup> North Clover Creek Prehearing Brief, at 23-26.

1 The County disagrees, pointing out that the interested participants in the early review of the  
2 companion proposals – U-8a with U-8b – were informed, and in fact, a number of them  
3 subsequently testified in opposition to the stand-alone U-8a.<sup>73</sup>  
4

5 Applicable Law

6 The Board summarized the applicable GMA requirements in *MBA/Brink v Pierce County*.<sup>74</sup>

7 The GMA requires jurisdictions to establish a public participation program that  
8 provides for “early and continuous public participation in the development and  
9 amendment of comprehensive land use plans and development regulations  
10 implementing such plans.” RCW 36.70A.140. RCW 36.70A.130(3), which governs  
11 review and amendments to Plans and regulations, reiterates the Act’s requirements  
12 for public participation. Additionally, the public participation program “shall include  
13 notice procedures that are reasonably calculated to provide notice to property owners  
14 and other affected and interested [individuals and groups] of the proposed  
15 amendments to comprehensive plans and development regulations.” RCW  
16 36.70A.035. Further, if a legislative body chooses to consider a change to a plan or  
17 development regulation after the opportunity for public review and comment has  
18 passed, “an opportunity for review and comment on the proposed change shall be  
19 provided before the legislative body votes on the proposed change.” RCW  
20 36.70A.035(2)(a).

21 RCW 36.70A.035(2) specifically addresses the requirements for public review of changes to  
22 a comprehensive plan amendment introduced *after* public comment is closed:

- 23 (a) Except as otherwise provided in (b) of this subsection, if the legislative  
24 body for a county or city chooses to consider a change to an amendment  
25 to a comprehensive plan or development regulation, and the change is  
26 proposed after the opportunity for review and comment has passed under  
27 the county’s or city’s procedures, an opportunity for review and comment  
28 on the proposed change shall be provided before the local legislative body  
29 votes on the proposed change.

30 Discussion and Analysis

31 <sup>73</sup> County Response, at 66-67, pointing out that at the final County Council hearing, petitioners Audrey Chase  
32 and Dan Haire (North Clover Creek) and James Halmo and Bud Rehberg attended and testified. Ex. PCC 135,  
at 8.

<sup>74</sup> CPSGMHB Case No. 02-3-0010, Final Decision and Order (Feb. 4, 2003), at 7.

1 The Board notes that the public process for a comprehensive plan amendment will  
2 frequently result in changes to the proposal as originally introduced.<sup>75</sup> “Eleventh-hour”  
3 amendments not within the scope of the process will be remanded to the jurisdiction by the  
4 Board for public notice and an opportunity for public comment. In *MBA/Brink, supra*, a new  
5 zoning designation – high-density single family – was first introduced on the day of Pierce  
6 County Council’s final adoption of the Parkland/Spanaway/Midland Community Plan. In  
7 *Pilchuck v City of Mukilteo*,<sup>76</sup> a Critical Area Ordinance (CAO) buffer reduction provision  
8 outside the scope of previous analysis was introduced and adopted at the final City Council  
9 meeting after the close of public comment – literally after 11:00 p.m. In both *MBA/Brink* and  
10 *Pilchuck*, the Board ruled that GMA notice and public comment requirements were violated  
11 by the last-minute amendments.  
12

13  
14 The present case is readily distinguishable. Amendment U-8a was in the County’s packet of  
15 proposed amendments from the beginning of 2009. The merits of the UGA expansion were  
16 fully debated in numerous hearings. After the proposal was stripped of the companion U-8b  
17 amendment and offered as a stand-alone UGA expansion on September 9,<sup>77</sup> the proposal  
18 was considered on at least three occasions - in a September 21 Council Community  
19 Development Committee hearing,<sup>78</sup> a Mid-County LUAC meeting,<sup>79</sup> and a County Council  
20 hearing on October 13<sup>80</sup> prior to County Council adoption. Therefore, the public had an  
21 opportunity to review and comment on the change, as the GMA requires.  
22

23  
24 As the Board explained in *Burrows v Kitsap County*:<sup>81</sup>  
25  
26

27  
28 <sup>75</sup> See, *North Everett Neighbor Alliance v. City of Everett*, CPSGMHB Case No. 08-3-0005, Final Decision and  
29 Order (Apr. 28, 2009); *Halmo v. Pierce County*, CPSGMHB Case No. 07-3-0004c, Final Decision and Order  
30 (Sep. 28, 2007); *Cave/Cowan v. City of Renton*, CPSGMHB Case No. 07-3-0012, Final Decision and Order  
31 (July 30, 2007).

32 <sup>76</sup> *Pilchuck V v Mukilteo*, CPSGMHB Case No. 05-3-0029, Final Decision and Order (Oct. 10, 2005).

<sup>77</sup> Ex. PCC 72.

<sup>78</sup> County Response, at 11, para. 41.

<sup>79</sup> Merriman Brief Ex A-3.

<sup>80</sup> County Response, at 11, para 42.

<sup>81</sup> CPSGMHB Case No. 99-3-0018, Final Decision and Order (March 29, 2000), at 10.

1 [I]f the public had the opportunity to review and comment on the changes to the  
2 proposed amendments, then the [county] is not required to provide an additional  
3 opportunity for public participation.

4 Thus, the Board is not persuaded that a mistake has been made.

5 Conclusion

6 The Board finds and concludes that Petitioners North Clover Creek have not carried their  
7 burden of demonstrating noncompliance with the notice and public participation  
8 requirements of the GMA. North Clover Creek Legal Issue 1.d is **dismissed**.  
9

10  
11 ***Is adoption of Amendment U-8a necessary to accommodate urban growth? NO***

12 Legal Issues NCC 1.a, Halmo 1.a, and FW 1 assert that the County's adoption of  
13 Amendment U-8a violates RCW 36.70A.110, 115, 130, GMA Planning Goals and other  
14 provisions, and is inconsistent with the County Comprehensive Plan, by expanding the  
15 County's urban growth areas beyond that needed to accommodate the County's projected  
16 urban residential growth.<sup>82</sup>  
17

18 The Staff Report on Amendment U-8 states: "According to the 2007 Pierce County Buildable  
19 Lands Report, the County currently has excess land capacity for projected population and  
20  
21

22  
23 <sup>82</sup> **NCC 1.a.** Is the challenged action in violation of, or inconsistent with, RCW 36.70A.215, Pierce County  
24 Development Regulation 19A.30.010 (LU-UGA Objective 6), and 19C.10PCC in that the UGA amendment is  
25 inconsistent with the Buildable Lands Report because there is not a need for additional urban residential  
26 lands? (citing also RCW 36.70A.040, .070, .110, .115, .210, .130, GMA Goals 1,2,5,9, 10, and 12, PCC  
27 19C.10.055, PCC 19C.10.060B, Countywide Planning Policy for Urban Growth Areas 1.2 and 2.2, and the  
28 Countywide Planning Policies related to buildable Lands and UGA boundary amendments.) [North Clover  
29 Creek's allegations of non-compliance with GMA Section .115 and Goals 5 and 9 were not argued in the  
30 prehearing brief and are deemed **abandoned**.]

31 **Halmo 1.a.** Does the Amendment fail to comply with WAC 365-195-335 and the County's Comprehensive  
32 Plan by expanding the Urban Growth Area for residential lands when the existing UGA has excess capacity?  
(citing County's Comprehensive Plan 19A.30 LU-UGA Objectives 1, 3, 6 and 19A.140 LU-CO Objectives 44  
through 47.)

**FW 1.** By adopting *Amendment Nos. U-7 and U-8* to Ordinance No. 2009-71s, and otherwise by expanding  
the County's urban growth areas beyond that needed to accommodate the County's adopted population  
projection, has Pierce County violated GMA Planning Goals 1, 2, 5, 9, 10, and 12 and GMA Sections .040,  
.070, .110, .115, and .130? [Futurewise's allegations of non-compliance with GMA Sections .040, .130 and  
the listed GMA Planning Goals were **abandoned**.]

FINAL DECISION AND ORDER

CPSGMHB Case No. 10-3-0003c *North Clover Creek*

August 2, 2010

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1 employment growth for the year 2022.”<sup>83</sup> The Buildable Lands Report facts on which  
2 Petitioners rely are set forth above in the discussion of Knox Amendment U-7.

3  
4 Mr. Merriman responds by citing to a 2005 staff report in connection with Pierce County’s  
5 consideration of the Mid-County Community Plan.<sup>84</sup> The 2005 staff report noted that the  
6 area proposed by Mr. Merriman at that time for inclusion in the UGA would need further  
7 environmental analysis. However, the staff opined: “The overall effect ... on urban housing  
8 capacity would be insignificant.”<sup>85</sup>  
9

10 The Board concurs with Petitioners here. In contrast with U-7, which because of the land  
11 swap added no acreage to the UGA. U-8a brings in an additional 5.2 acres. In the absence  
12 of a new land capacity analysis or new population projections, there is no basis for an  
13 expansion of the Pierce County UGA. There is simply no evidence in the record indicating a  
14 need for more urban land in this area. With the UGA already substantially oversized, even  
15 marginal expansions violate the GMA requirement of RCW 36.70A.110(2) to size UGAs to  
16 accommodate forecasted growth and the GMA Goal to reduce sprawl. The Board is  
17 persuaded that a mistake has been made.  
18  
19

20 Conclusion

21 The Board finds and concludes that adoption of Amendment U-8a was clearly erroneous  
22 and failed to comply with RCW 36.70A.110(2) or be guided by RCW 36.70A.020(2).  
23

24 ***Is Amendment U-8a consistent with the County’s Comprehensive Plan and Mid-***  
25 ***County Community Plan Policies for No Net Loss of Rural Separator Lands? NO***  
26

27 Legal Issue NCC 1.b, Halmo 1.b, Halmo 1.d, and FW 1.a assert that the County’s adoption  
28 of Amendment U-8a is inconsistent with provisions of Pierce County’s Comprehensive Plan  
29 and the Mid-County Community Plan. These provisions call for a companion ordinance  
30  
31

32 <sup>83</sup> Ex. PCC 99, at 211.

<sup>84</sup> Merriman Brief, Ex. A-6.

<sup>85</sup> *Id.*

1 “swapping” land out of the UGA when a Rural Separator parcel is proposed to be added to  
2 the UGA.<sup>86</sup> The Mid-County Plan also contains other provisions to preserve rural character.  
3 Mr. Merriman included a companion amendment in January, 2009, Amendment U-8b, when  
4 he submitted his proposal, but the companion amendment was subsequently withdrawn.<sup>87</sup>  
5

### 6 County Comprehensive Plan Provisions

7 The GMA requires that a county’s comprehensive plan “shall be an internally consistent  
8 document.”<sup>88</sup> The county “shall perform its activities ... in conformity with its comprehensive  
9 plan.”<sup>89</sup> As noted in the discussion of the Knox Amendment U-7, Pierce County’s plan and  
10 the Mid-County Community Plan as a component of the comprehensive plan, contain  
11 provisions concerning UGA expansion.  
12

13  
14 Pierce County Code 19.C10.055.F provides, in relevant part: “[A]ny application requesting  
15 expansion of an Urban Growth Area shall include a companion application for reducing the  
16 Urban Growth Area in another location to ensure that the amount of residential land  
17 capacity is not increased...”  
18

19 The U-8a parcels are within the Mid-County Community Plan area. The Mid-County Plan,  
20 adopted by Pierce County Council in 2005 as part of its Comprehensive Plan, states:  
21

22  
23 <sup>86</sup> **NCC 1.b.** Is the challenged action in violation of, or inconsistent with, Pierce County Mid-County Community  
24 Plan Standard 1.5.1 and the GMA in that Pierce County failed to comply with the County’s “no net loss policy”  
for the Rural Separator designation?

25 **Halmo 1.b.** Does the Amendment fail to comply with Section 19C.10.055 F of the County’s Comprehensive  
26 Plan Procedures for Amendments to the Comprehensive Plan as well as the Mid-County Community Plan by  
not adopting a required companion amendment to ensure “no net loss” of Rural Separator land? (citing Mid-  
27 County Community Plan Land Use Policies [Objectives, Principles, Standards], Rural Residential, Objective 1,  
Principal 5 and its Standards.)

28 **Halmo 1.d.** Is the Amendment inconsistent with RCW 36.070A.030(15), RCW 36.070A.070, WAC 365-195-  
29 330, and the Mid-County Community Plan requirements to preserve the community’s rural character? (citing  
30 Mid-County Community Plan Land Use Policies, [Objectives, Principles, Standards] Rural Residential, Intent  
and Objective 1 with its Principles and Standards as well as Rural Commercial, Intent and Objective 4 with its  
31 Principles 1 and 2; Community Character and Design Element, Rural Character, Objective 17.)

32 <sup>87</sup> Amendment U-8b would have redesignated approximately 9 acres from an urban land use designation to a  
rural land use designation and removed this acreage from the Pierce County UGA.

<sup>88</sup> RCW 3670A.070 (preamble).

<sup>89</sup> RCW 36.70A.120.



1 No net loss of Rural Separator lands shall occur after the adoption of the Mid-  
2 County Community Plan.<sup>90</sup>

3 This community plan requirement for “no net loss” arises out of the Mid-County Community  
4 Plan’s Vision Statement which states the intent to “protect and foster the unique rural  
5 atmosphere of the community [and] promote a clear distinction between urban and rural  
6 areas....”<sup>91</sup> The Mid-County Plan’s land use policies specify: “The Rural Separator  
7 designation is intended to protect and preserve the rural-residential character of the area  
8 [and] protect rural lands from continued urban-suburban sprawl...”<sup>92</sup>  
9

10  
11 Board Discussion and Analysis

12 In Pierce County’s Comprehensive Plan, a rural-urban land exchange is one method by  
13 which new land can be added to a UGA without demonstrating a population increase or  
14 buildable lands shortage.<sup>93</sup> In a companion amendment with a rural-urban exchange, there  
15 is no net change to the UGA size or buildable lands capacity.  
16

17 The GMA requires a comprehensive plan to be “an internally consistent document” and  
18 requires the actions of the County to be consistent with its plan.<sup>94</sup> In approving Amendment  
19 U-8a which removed parcels from the Rural Separator and added them to the Urban Growth  
20 Area *without* a “companion application for reducing the Urban Growth Area in another  
21 location,” Pierce County took action *inconsistent* with its Comprehensive Plan procedures  
22 for amending the UGA – PCC 19C.10.055.F. In approving U-8a, the County took action  
23 *inconsistent* with the Mid-County Community Plan Standard 1.5.1 of no net loss of rural  
24 separator lands.  
25  
26  
27  
28  
29

30  
31 <sup>90</sup> *Id.*

32 <sup>91</sup> Halmo Ex. 8, at 13.

<sup>92</sup> *Id.* at 23.

<sup>93</sup> PCC 19C.10.055.F.

<sup>94</sup> RCW 36.70A.070 (preamble); RCW 36.70A.120.

1 The Board is left with a firm and definite conviction that a mistake has been made. The  
2 Board finds and concludes that by adopting Amendment U-8a without a companion  
3 amendment, Pierce County failed to comply with the GMA requirement for consistency in  
4 amendments to its Comprehensive Plan.

5  
6 The Board's "firm and definite conviction" is reinforced by the GMA legislative findings in  
7 RCW 36.70A.011 which stress "the importance of rural land and rural character" and  
8 indicate that "a county should ... develop a local vision of rural character." Although the  
9 Board concurs with the County that legislative findings, such as RCW 36.70A.011  
10 concerning rural lands, create no independent duty for the County and thus cannot form the  
11 basis for GMA non-compliance,<sup>95</sup> such findings are instructive under the facts in this case.  
12 Pierce County, through its community plans, has developed and adopted "local visions of  
13 rural character."  
14

15  
16 The Mid-County Community Plan describes a local vision to "promote a clear distinction  
17 between urban and rural."<sup>96</sup> The Rural Separator designation is a significant element of the  
18 community strategy to preserve rural-residential character and "protect rural lands from  
19 continued urban-suburban sprawl."<sup>97</sup> This vision should inform the County's action as it  
20 considers and takes actions on Comprehensive Plan amendments in the Mid-County area.  
21

## 22 Conclusion

23  
24 The County's action in adopting Amendment U-8a without a companion ordinance was  
25 clearly erroneous in that it was inconsistent with the County's Comprehensive Plan  
26 requirement for a "companion application" – PCC 19C.10.055.F - and with the Mid-County  
27 Community Plan provisions for "no net loss" of rural separator lands – Standard 1.5.1.  
28 Accordingly, the County's action **does not comply** with RCW 36.70A.070 (preamble).  
29  
30

31 <sup>95</sup> As the Board previously noted in Preliminary Matters, North Clover Creek's allegation of *non-compliance*  
32 with .011 is dismissed.

<sup>96</sup> Halmo Ex. 8, at 13.

<sup>97</sup> *Id.* at 23.

1 ***Does the County have plans to provide urban services to Amendment U-8a? Record***  
2 ***is Contradictory.***  
3

4 Legal Issue NCC 1.f asserts that Amendment U-8a violates RCW 36.70A.070, .110 and  
5 Planning Goal 12 because it “promotes urban density in an area not planned for urban  
6 services.”<sup>98</sup> Petitioners North Clover Creek contend that the County has not planned to  
7 provide the necessary urban services – specifically, sewer service. North Clover Creek  
8 points out that the Board has long held sanitary sewer service is an essential urban service  
9 that must be planned for and provided to UGAs within six years.<sup>99</sup>  
10

11 At the Hearing on the Merits, Mr. Merriman stated that his parcels have urban water service,  
12 that the property has appropriate size and soil type to accommodate drywells for rainwater  
13 management, and that the property size and soil type will accommodate septic systems for  
14 development to the allowed urban densities.<sup>100</sup>  
15

16 The GMA requires capital facilities planning to be consistent with land use planning and  
17 urban land use to be supported by urban services.<sup>101</sup> Sanitary sewer service is essential to  
18 support residential development at urban densities.<sup>102</sup> Thus, extension of the UGA to  
19 include the U-8a parcels must be accompanied by plans to provide sewer service.  
20  
21  
22

---

23  
24 <sup>98</sup> **NCC 1.f.** Is the challenged action in violation of, or inconsistent with, the GMA and County Comprehensive  
25 Plan in that it creates a parcel by parcel development pattern, increases the likelihood of incompatible uses  
26 and densities, and promotes urban densities in an area not planned for urban services? (citing RCW  
27 36.70A.011, .040, .060, .070, .110, .115, .130, and .210, GMA Goals 1, 2, 5, 8, 9, 10, 12; the Plan  
28 implementation requirements of RCW 36.70A.040(3), and the objectives, principles, and criteria of PCC  
29 19A.40.010, .020, .030, 19A.30.010, 055, 100, and PCC 19C.10.055, PCC 19C.10, PCC 19C.10.060B.)  
30 [North Clover Creek’s allegations of non-compliance with GMA Sections .060, and .115, and Goals 5, 8, and 9  
31 were not argued in the prehearing brief and are deemed **abandoned.**]

32 <sup>99</sup> North Clover Creek Brief, at 22-23, citing *Robison v. City of Bainbridge Island*, CPSGMHB Case No. 94-3-  
0025c, Final Decision and Order (May 3, 1995), at 20-21; *Durland v. San Juan County*, WWGMHB Case No.  
00-2-0062c, Compliance Order (May 7, 2001), at 6-8.

<sup>100</sup> HOM Ex. 1, “Talking Points.”

<sup>101</sup> RCW 36.70A.020(12); .070(3); .110(3).

<sup>102</sup> See *Suquamish II v Kitsap County*, CPSGMHB Case No. 07-3-0019c, Final Decision and Order (Aug 15,  
2007) (County’s CFE was noncompliant since it could not demonstrate that sanitary sewer would be available  
for the expanded UGAs); *KCRP IV v. Kitsap County*, CPSGMHB Case No. 06-3-0007, Order of Non-  
FINAL DECISION AND ORDER

1 However, the record on this question is contradictory. The Staff Report for Amendment U-8a  
2 first states: "None of the parcels proposed for re-designation are within 300 feet of existing  
3 sanitary sewer lines."<sup>103</sup> The Report acknowledges: "No sewer extensions are planned  
4 within the 6-year horizon for sewer in the vicinity of either portion of the proposal."<sup>104</sup> "Urban  
5 services are not within the 6-year planning horizon for the vicinity, as such, the UGA should  
6 be maintained as it exists."<sup>105</sup> At the same time, the Report states: "Sewer lines currently  
7 exist along Canyon Creek Road East, approximately 300 feet east of the portion of the  
8 proposal for inclusion within the UGA."<sup>106</sup>

11 The contradiction was not resolved at the Hearing on the Merits, each party relying on its  
12 preferred quote from the Staff Report – "no sewer lines within 300 feet," or "sewer lines  
13 currently exist 300 feet east."

15 The Board is **unable to make a ruling** on this issue, due to the contradiction in the record.

17 ***Does Amendment U-8a create an irregular urban development pattern contrary to***  
18 ***Pierce County Countywide Planning Policies and the GMA? YES***

20 Legal Issues NCC 1.c, NCC 1.f, and Halmo 1.c assert that the County's adoption of  
21 Amendment U-8a approves irregular UGA boundaries in violation of the GMA requirements  
22 for consistency among comprehensive plan and County-wide Planning Policies.<sup>107</sup>

---

25 compliance and Invalidity (Mar. 16, 2007) (finding continuing noncompliance and invalidity for County's failure  
26 to address sanitary sewer services for new and existing urban population over the 20-year planning period).

27 <sup>103</sup> Staff Report, Ex. PCC 99, at 209-210.

28 <sup>104</sup> *Id.* at 210.

29 <sup>105</sup> *Id.* at 216.

30 <sup>106</sup> *Id.* at 210.

31 <sup>107</sup> **NCC 1.c.** Is the challenged action and the County's failure to preserve natural neighborhoods and maintain  
32 the Urban Growth Boundary on Brookdale Road, a distinct major arterial, in violation of, or inconsistent with,  
Countywide Planning Policies, County Comprehensive Plan provisions and the GMA? (citing CPP Urban  
Growth Areas 2.1 and 2.2, RCW 36.70A.011, .110, .210 and the Plan implementation requirements of .040(3);  
RCW 36.93.180; and the objectives, principles and criteria of PCC 19A.40.010, .020, .030, PCC 19A.30.010,  
.055, .100, and PCC 19C.10.055, PCC 19C.10, PCC19C.10.060B.)

**NCC 1.f.** Is the challenged action in violation of, or inconsistent with, the GMA and County Comprehensive  
Plan in that it creates a parcel by parcel development pattern, increases the likelihood of incompatible uses

1 Brookdale Road, a local arterial, provides the boundary between the Urban Growth Area to  
2 the south and the Rural Separator to the north in the vicinity of the Amendment U-8a  
3 parcels. The Amendment, however, creates a tongue of urban land on the north side of  
4 Brookdale Road up a long driveway to the parcels approved for urban development as a  
5 result of the Amendment. Thus Amendment U-8a allows a peninsula of urban development  
6 surrounded by rural lands and connected to the larger UGA only by the narrow strip along  
7 the driveway.<sup>108</sup>  
8  
9

10 Petitioners North Clover Creek and Halmo contend that allowing an irregular node of urban  
11 development to extend into the rural area, rather than following a recognizable boundary, is  
12 inconsistent with Pierce County Comprehensive Plan criteria for urban growth boundaries  
13 and with Countywide Planning Policies for UGAs.  
14

15 At the hearing, Mr. Merriman argued that the County's policies do not work if a roadway is  
16 allowed to become a permanent obstacle to a property owner's effort to develop at urban  
17 densities. Mr. Merriman pointed out that the requirement for a regular and fixed boundary  
18 line would make incremental extensions of urban development infeasible. An arterial  
19 boundary means the UGA could never be expanded, he said, as any proposal by definition  
20 must deviate from the main arterial.<sup>109</sup>  
21  
22

### 23 Comprehensive Plan and Countywide Planning Policy Provisions

24 Pierce County's Comprehensive Plan Procedures at PCC 19C.20.040 address boundaries  
25 for community plan areas. Community plan areas are to have boundaries "defined by  
26  
27  
28

---

29 and densities, and promotes urban densities in an area not planned for urban services? [References cited in  
30 full, *supra*]

31 **Halmo 1.c.** Does the Amendment fail to comply with Pierce County Countywide Planning Policy UGA-2.2  
32 (Ordinance 2005-52s) and Section 19C.20.040 Boundaries of the County's Comprehensive Plan Procedures  
by not following readily identifiable boundary features for Rural Separator lands?

<sup>108</sup> Ex. PCC 72 and 136, attached map.

<sup>109</sup> HOM Ex. 1.

1 topography and natural land features or manmade constructions, transportation arterials,  
2 road and rail, etc.”<sup>110</sup>

3  
4 Pierce County Countywide Planning Policy UGA-2.2 states that “geographic, topographic,  
5 and manmade features” should be used in determining the location of urban growth  
6 boundaries.”<sup>111</sup>

7  
8 The Mid-County Community Plan’s Vision Statement states the intent to “promote a clear  
9 distinction between urban and rural areas.”<sup>112</sup>

10  
11 Board Discussion and Analysis

12 The Board notes that the Staff Report recommended denial of Amendment U-8a, even with  
13 a companion amendment, in large part because the shape and location of this addition to  
14 the UGA would create an irregular development pattern virtually inviting sequential parcel-  
15 by-parcel applications in the area north of Brookdale Road. Specifically, the Staff Report  
16 stated:

17  
18 Staff recommends denial of the proposed amendment both to include 5.2  
19 acres into the UGA in the vicinity of Brookdale Road, and to exclude 9.2 acres  
20 in the vicinity of Aqueduct Drive. Staff recommends denial because *the UGA* in  
21 both instances *follows a distinct pathway along arterials, allowing for a*  
22 *consistent development pattern*. Redesignation as proposed would create a  
23 parcel by parcel development pattern and increase the likelihood of  
incompatible uses and densities.”<sup>113</sup>

24  
25 County Comprehensive Plan Policy 19C.20.040 calls for readily identifiable boundaries for  
26 community plan areas. The Board does not read this criterion to be applicable to the  
27 boundaries of land use designations *within* community plans. The Halmo allegation of  
28 inconsistency with this policy is **dismissed**.

29  
30  
31  
32 <sup>110</sup> County Response, Attachment A, at 33.

<sup>111</sup> County Response, Attachment A, at 39. Other boundary considerations in this policy are not applicable.

<sup>112</sup> Halmo Ex. 8, at 13.

<sup>113</sup> Staff Report Ex. PCC 99, at 217 (emphasis added).

1 The Countywide Planning Policies “establish a county-wide framework” to “ensure that city  
2 and county comprehensive plans are consistent.”<sup>114</sup> Pierce County’s Countywide Planning  
3 Policy UGA-2.2 calls for UGA boundaries based on geographic, topographic or manmade  
4 features. Brookdale Road is such a manmade feature – an arterial which forms a portion of  
5 the boundary between urban and rural areas in the Mid-County Plan. The Board concurs  
6 with Petitioners that Amendment U-8a is *inconsistent* with this CPP in creating an irregular  
7 boundary defined by parcels, not physical features.  
8

9  
10 The Mid-County Plan, as previously indicated, calls for “a clear distinction” between urban  
11 and rural areas. Logical boundaries are an important determinant of such distinctions. The  
12 Board finds that Amendment U-8a is *inconsistent* with this aspect of the Mid-County  
13 Vision.<sup>115</sup> The Staff Report explained that Amendment U-8a “would result in an inconsistent  
14 pattern of development [and] would create a staggered parcel by parcel development  
15 pattern which is contrary to that envisioned by the community plan and the comprehensive  
16 plan.”<sup>116</sup> The Report elaborated:  
17

18 “The addition of the area north of Brookdale Road would create an  
19 inconsistent development pattern. If parcels proposed for inclusion into the  
20 UGA were developed, the result would be a small subdivision at densities  
21 greater than the surrounding area.”<sup>117</sup>  
22

23 The Board has held that one of the purposes of UGA designation is to make urban lands  
24 available for eventual incorporation or annexation.  
25  
26

---

27 <sup>114</sup> RCW 36.70A.210(1).  
28

29 <sup>115</sup> “Indeed, poorly managed population growth can result in patterns ...that make it difficult to distinguish the  
30 rural from the urban... In a region like Washington State, where a rich tapestry of distinct rural and urban  
31 communities has long provided for a wide range of diverse lifestyles, maintaining the fundamental distinction  
32 between town and country is widely viewed as an essential function of growth management law.” Brent D.  
Lloyd, *Accommodating Growth or Enabling Sprawl? The Role of Population Growth Projections in  
Comprehensive Planning under the Washington State Growth Management Act*, 36 Gonz. L. Rev. 73, 75-76  
(2001).

<sup>116</sup> Ex. PCC 99, at 210.

<sup>117</sup> *Id.* at 215.

1 One of the fundamental purposes of a Comprehensive Plan is to achieve  
2 transference of local governance within the UGA such that cities are the primary  
3 providers of urban services.<sup>118</sup>

4 In this context, it is useful to note that the Boundary Review Board objectives for annexation  
5 or incorporation include:

- 6 1) Preservation of natural neighborhoods and communities;  
7 2) Use of physical boundaries, including but not limited to bodies of water, highways,  
8 and land contours;  
9 3) Creation and preservation of logical service areas;  
10 4) Prevention of abnormally irregular boundaries.<sup>119</sup>

11 Although, as noted *supra*, the Board has no jurisdiction to *determine compliance* with RCW  
12 36.193's objectives,<sup>120</sup> the Board may *consider* the Boundary Review statute and the criteria  
13 for annexation by cities. In the present instance, the Boundary Review Board objectives  
14 reinforce the Board's "firm and definite conviction that a mistake has been made," because  
15 the irregular UGA boundary created by Amendment U-8a poses a difficulty for eventual  
16 annexation.

## 17 Conclusion

18 The Board finds and concludes that Pierce County's action in adopting Amendment U-8a  
19 did not violate the GMA notice and public participation requirements. However, adoption of  
20 Amendment U-8a was **clearly erroneous** in that the UGA expansion was not necessary to  
21 accommodate projected growth, as required by RCW 36.70A.110(2), and the action was  
22 **inconsistent** with provisions of the County Comprehensive Plan (PCC 19C.10.055.F), Mid-  
23 County Community Plan (Standard 1.5.5), and Countywide Planning Policies (UGA-2.2).  
24 Thus, the adoption of Amendment U-8a **does not comply** with RCW 36.70A.110 and RCW

25 <sup>118</sup> *Abenroth v. Skagit County*, WWGMHB Case No. 97-2-0060, Final Decision and Order (Sep. 23, 1998).

26 <sup>119</sup> RCW 36.93.180.

27 <sup>120</sup> As the Board previously noted in Preliminary Matters, North Clover Creek's allegation of non-compliance  
28 with the Boundary Review statute is dismissed.



1 36.70A.070 (preamble). The Board **remands** this portion of Ordinance No. 2009-71s to the  
2 County for action to bring its Plan into compliance with the GMA.

3  
4 **Invalidity**

5 The Board may enter an order of invalidity upon a determination that the continued validity  
6 of a non-compliant ordinance substantially interferes with the goals of the Growth  
7 Management Act.<sup>121</sup> The Board views invalidity as a remedy that may be imposed by the  
8 Board even in the absence of a request by a petitioner. However, the petitioner still bears  
9 the burden of demonstrating substantial interference with GMA goals.  
10

11 In this case the petitioners have made only conclusory arguments. North Clover Creek  
12 asserts: “[Amendment U-8a] substantially interferes with the goals of the GMA related to  
13 controlling sprawl, protecting the environment and natural habitats, preserving open space  
14 and rural lands.”<sup>122</sup> Futurewise also provides a single sentence: “[Amendment U-8a]  
15 frustrates the goals of the GMA to reduce sprawl, protect the environment, encourage urban  
16 growth within established UGAs, and promote long-term economic prosperity.”<sup>123</sup> None of  
17 the petitioners provides the Board with any fact-specific argument or legal authority  
18 demonstrating the basis for a determination of invalidity in regard to Amendment U-8a.  
19  
20

21 The Board is not persuaded that continued validity of the Amendment U-8a provisions  
22 during the period of remand to the County will substantially interfere with the Goals of the  
23 GMA. The request for a determination of invalidity is **denied**.  
24

25  
26 • **AMENDMENT T-6, UGA EXPANSION CRITERIA**

27 Legal Issue FW 2 asserts that the County’s adoption of Amendment T-6 violates RCW  
28 36.70A.060, 110, and 170.<sup>124</sup> By Amendment T-6, Pierce County revised various sections  
29

30  
31 <sup>121</sup> RCW 36.70A.302(1)(b).

32 <sup>122</sup> North Clover Creek Prehearing Brief, at 27.

<sup>123</sup> Futurewise Prehearing Brief at 12.

<sup>124</sup> **FW 2.** By adopting *Amendment No. T-6*, UGA expansion criteria, to Ordinance No. 2009-71s, without  
protections for working farms, specifically failing to prohibit including agricultural lands of long-term

1 of the Pierce County Comprehensive Plan and Comprehensive Plan Procedures to amend  
2 its UGA expansion criteria and process. Futurewise challenged Amendment T-6 for “failing  
3 to prohibit including agricultural lands of long-term commercial significance within urban  
4 growth areas.” Futurewise contends that the amended policy as a whole fails to comply with  
5 the GMA requirement to protect agricultural lands and distinguish them from urban lands.<sup>125</sup>  
6

7 Pierce County largely deferred to Intervenor City of Sumner to defend Amendment T-6.<sup>126</sup>  
8

9 ***Does Amendment T-6 place the amended Plan provisions as a whole before the***  
10 ***Board for review? YES***

11 The City of Sumner asserts that Futurewise is only entitled to challenge the policy language  
12 actually changed by Amendment T-6.<sup>127</sup> The City contends that Futurewise is raising a  
13 “failure to amend” challenge which is barred by the Supreme Court rulings in *Gold Star*  
14 *Resorts v Futurewise*<sup>128</sup> and *Thurston County v Western Washington GMHB*.<sup>129</sup> The Board  
15 disagrees, for the reasons set forth below.  
16

17  
18 *Statement of Facts*

19 Amendment T-6 was not undertaken as part of a periodic required comprehensive plan  
20 review or update.<sup>130</sup> Rather, Pierce County undertook a revision of its UGA expansion  
21

22  
23 commercial significance within urban growth areas, and other violations of the Growth Management Act, has  
24 Pierce County failed to adopt comprehensive plan provisions and development regulations to conserve  
25 natural resource lands and protect them from incompatible development, failed to comply with the GMA  
26 requirements for urban growth areas, and otherwise failed to comply with GMA Planning Goals 1, 2, 5, 8, 9,  
27 10, and 12 and with GMA Sections .040, .050, .060, .070, .110, .130, .170, and .177? [Futurewise's  
28 allegations of non-compliance with GMA Sections .040, .050, .070, .130, and .177 were not argued or even  
29 referenced in its prehearing brief. Similarly, the prehearing brief makes no argument concerning the listed  
30 GMA Planning Goals 1,2,5,8,9,10 and 12. These elements of FW Issue 2 are deemed **abandoned.**]

31 <sup>125</sup> At the Prehearing Conference, Futurewise was asked to specifically identify the sections of the Amendment  
32 T-6 to which it objected. However, Futurewise clarified that the basis of its challenge was an assertion that the  
Amendment as a whole was non-compliant with GMA requirements for ARLs and UGAs. Futurewise  
Prehearing Brief, at 12-18.

<sup>126</sup> County Response, at 42.

<sup>127</sup> Sumner Brief at 12-13.

<sup>128</sup> 167 Wn.2d 723, 222 P.3d 791 (2009).

<sup>129</sup> 164 Wn.2d 329, 190 P.3d 38 (2008).

<sup>130</sup> See, e.g. RCW 36.70A.130's 7-year update for Comprehensive Plans or 10-year update for UGAs.

1 policies in a non-update year. Under the title of “UGA Expansion Criteria,” Amendment T-6  
2 comprised 7 pages of additions and amendments to numerous Comprehensive Plan  
3 policies and procedures concerning UGA expansion. Amendment T-6 was broadly  
4 considered by the public and incorporated recommendations developed through planning  
5 efforts performed by a County UGA Ad Hoc Policy Review Committee, the Pierce County  
6 Growth Management Coordinating Committee, and the Pierce County Regional Council.<sup>131</sup>  
7

8 The review and public discussion of Amendment T-6 resulted in multiple changes to the  
9 UGA and Agricultural Policies in the Land Use Element and also to changes in several  
10 sections of the procedures for Comprehensive Plan amendment. Revisions included desired  
11 location of future UGA expansions, expanded public process, information to be reviewed for  
12 land capacity analysis, incorporation of the newly adopted County TDR regulations,  
13 changes to agricultural land de-designation criteria, and the geographic basis for land  
14 capacity analysis (county-wide or city-specific).  
15  
16

17 The Planning Commission recommended denial of T-6 saying the proposed language  
18 needed more work.<sup>132</sup> Comments were received from the Cities of Tacoma, Sumner, and  
19 Puyallup. Seven community land use advisory commissions (LUACs) reviewed the  
20 Amendment, with several making recommendations or proposing language changes.<sup>133</sup> In  
21 sum, Amendment T-6 was the result of a broad-based and multi-faceted policy review.<sup>134</sup>  
22  
23

#### 24 Board Discussion and Analysis

25 The County and Sumner contend that Futurewise is raising a “failure to revise” challenge  
26 which is time-barred. The Supreme Court in *Gold Star Resorts*<sup>135</sup> and *Thurston County*<sup>136</sup>  
27

28  
29 <sup>131</sup> Sumner Brief, at 6-7; County Response, at 7-12.

30 <sup>132</sup> The Planning Commission concerns were apparently based on testimony from the Master Builders’  
Association. Ex. CP 697, at 3, CP 698, at 6.

31 <sup>133</sup> County Response at 7-12, Ex. CP 780, CP 655, CP 726.

32 <sup>134</sup> The Pierce County Executive based her veto of Ordinance 2009-71s in part on disagreement with T-6, but  
for reasons other than protection of agricultural lands. Ex. PCC 139.

<sup>135</sup> 167 Wn.2d at 733-34.

<sup>136</sup> 164 Wn.2d at 344-45.

1 has clarified that the periodic required updates to county and city comprehensive plans do  
2 not open the plans to general challenge. Rather, a “failure to revise” challenge is time-  
3 barred unless it is based either on an amended provision or on failure to amend a provision  
4 to conform to legislative changes.<sup>137</sup>

5  
6 The Board does not find that the *Thurston County* and *Gold Star Resorts* decisions preclude  
7 Futurewise’s challenge. The T-6 Amendment was not part of a required update but was a  
8 policy initiative which considered an array of changes to the County’s UGA criteria and  
9 process. With this initiative, the County “essentially reopened the consideration” of its UGA  
10 Expansion Criteria for public input and amendment; “[a]t this point, the county had no  
11 established rights in the [prior] language” of the provision.<sup>138</sup>

12  
13  
14 One impetus for the T-6 Amendment was the City of Sumner’s interest in implementing the  
15 County’s new TDR provisions and elements of the Alderton-McMillin Community Plan in  
16 order to absorb certain agricultural resource lands into the Sumner UGA.<sup>139</sup> With respect to  
17 agricultural resource lands, Amendment T-6 specifically amended (or inserted) provisions  
18 concerning agricultural lands subject to de-designation and/or UGA expansion:

- 19 • PCC 19A.30.010, LU-UGA Obj. 6.1.f and g
- 20 • PCC 19C.10.050.E.6.e and f
- 21 • PCC 19A.30.070, LU-Ag Obj. 18.D.2.e

22  
23 These portions of Amendment T-6 allow Pierce County to consider including agricultural  
24 resource lands within UGAs when there is a transfer of development rights and consistency  
25 with an adopted community plan. Futurewise contends that these loopholes violate the GMA  
26 requirement for protection of agricultural resource lands.<sup>140</sup> However, the amendments  
27 weren’t narrowly limited to TDR implementation.

28  
29  
30  
31 <sup>137</sup> “[W]e choose to limit challenges for failures to update comprehensive plans to those provisions that are  
32 directly affected by new or recently amended GMA provisions.” *Thurston County*, at 345.

<sup>138</sup> Compare, *Stevens County v Futurewise*, 146 Wn.App 493, 502-506, 192 P.3d 1, (2008).

<sup>139</sup> Sumner Brief at 7, Ex. PCC 84.

<sup>140</sup> Futurewise Prehearing Brief, at 12-18.

1 In the context of this comprehensive review of Pierce County's UGA expansion criteria and  
2 process, in part to accommodate absorption of farm lands, compliance with the UGA  
3 requirements for protection of agricultural lands was clearly on the table. The Board  
4 therefore finds and concludes that the challenge is timely and within its jurisdiction.  
5  
6

7 ***Does Amendment T-6 violate GMA requirements to protect Agricultural Land? NO***

8 *Statement of Facts*

9 Futurewise states that Pierce County's 1995 Comprehensive Plan included 1,990 acres of  
10 land in the UGA as an "Agricultural Overlay." Futurewise calculates that by 2003, roughly  
11 76% of these farmlands in the UGA had been annexed by cities and re-zoned for urban  
12 uses. In contrast, only 2.4% of the agricultural designation outside the UGA was rezoned  
13 during this period.<sup>141</sup> Pierce County has lost a greater percentage of its land in farms  
14 between 1997 and 2007 than all but two other Washington counties.<sup>142</sup> This analysis is not  
15 disputed by the Respondents, and the **Board takes the findings as undisputed facts.**  
16  
17

18 *Applicable Law*

19 The GMA contains a number of provisions which appear to contemplate that agricultural  
20 lands may be located and protected *in cities*. RCW 36.70A.040(3)(b) requires that "the  
21 county and *each city* located within the county shall designate ... agricultural lands ... and  
22 adopt development regulations conserving these designated agricultural lands." A county or  
23 a *city* containing designated agricultural lands must adopt regulations "to assure that the  
24 use of lands adjacent to agricultural ... resource lands shall not interfere with the continued  
25 use ... of these designated lands for the production of food [or] agricultural products." RCW  
26 36.70A.060(1)(a). A county *or city* is encouraged to use innovative zoning techniques such  
27 as agricultural zoning and cluster zoning to conserve agricultural lands of long-term  
28 commercial significance, necessarily implying that such lands may be within a city. RCW  
29 36.70A.177. RCW 36.70A.060(4) provides:  
30  
31  
32

---

<sup>141</sup> *Id.* at 17.

<sup>142</sup> *Id.*, citing Ex. PCC 107, Tab 107-C.

1 Forest land and agricultural land *located within urban growth areas* shall not be  
2 designated by a county or city as forest land or agricultural land of long-term  
3 significance under RCW 36.70A.170 unless the city or county has enacted a  
4 program authorizing transfer or purchase of development rights.

5 In contrast to the above statutory requirements for *cities* to designate and protect  
6 agricultural lands, other sections of the GMA indicate that agricultural resource land  
7 designation is incompatible with urban designation. At the outset, the GMA required each  
8 planning county and each city, even before enacting its comprehensive plan, to designate  
9 “agricultural lands *that are not already characterized by urban growth* and that have long  
10 term significance for the commercial production of food or other agricultural products.” RCW  
11 36.70A.170(1)(a). “Urban growth” is defined in RCW 36.70A.030(18) as “growth that makes  
12 intensive use of the land for the location of buildings, structures and impermeable surfaces  
13 to such a degree as to be *incompatible with the primary use of the land for the production of*  
14 *food*, other agricultural products, or fiber....” The GMA recognizes that “a variety of  
15 commercial activities may occur [on designated agricultural lands] that are *not compatible*  
16 with residential development.” RCW 36.70A.060(1)(b).  
17  
18

19 Board Discussion and Analysis  
20

21 Futurewise argues that urban growth and preservation of agricultural resource lands are  
22 mutually exclusive. “ARLs and UGAs are incompatible land uses in that the designation and  
23 protection of ARL which is required under GMA cannot be accomplished concurrently with  
24 establishing, on the same land, the density and urban level services require to be  
25 maintained with UGAs.”<sup>143</sup> The City of Sumner counters that the GMA contains no mandate  
26 that county policies *prohibit* inclusion of ARLs in the UGA, and, in fact, the GMA recognizes  
27 that agricultural land may be designated within urban growth areas if there is an offsetting  
28 transfer or purchase of development rights.<sup>144</sup>  
29  
30  
31  
32

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<sup>143</sup> Futurewise Prehearing Brief, at 14.

<sup>144</sup> Sumner Brief, at 15, citing RCW 36.70A.060(4).

1 Amendment T-6 inserts two considerations into Pierce County's determination of whether to  
2 re-designate agricultural resource lands for the purposes of expanding a UGA: (a) transfer  
3 or purchase of development rights and (b) consistency with an adopted community plan.<sup>145</sup>  
4 However, in the Board's view, Pierce County does not even reach these considerations until  
5 after it surmounts the dual hurdles of UGA over-capacity and ARL de-designation.  
6

7 The over-riding GMA principles that will work to prevent Pierce County's absorption of its  
8 agricultural resource lands into urban growth areas are independent of these new  
9 amendments to its comprehensive plan policies.  
10

11 First, Pierce County UGA's are significantly oversized. Any net expansion of the UGA will be  
12 difficult to justify under the Supreme Court's rule. As the Court held in *Thurston County*:  
13 "UGA designation cannot exceed the amount of land necessary to accommodate the urban  
14 growth projected by OFM, plus a reasonable land market supply factor."<sup>146</sup> Pierce County's  
15 existing UGA's have sufficient capacity for 43,690 households or an increase of more than  
16 100,000 population *beyond* what's needed to accommodate the 2022 forecasted growth.<sup>147</sup>  
17 The T-6 Amendment does not alter the requirement for appropriate UGA sizing if ever ARL  
18 lands are considered for inclusion in the UGA.  
19  
20

21 Second, designated agricultural resource lands may not be reclassified as rural or urban  
22 without a thorough de-designation analysis. In *TS Holdings v Pierce County*,<sup>148</sup> the Board  
23 reviewed Pierce County's process and criteria for ARL de-designation. In that case, a land  
24 owner objected that the Alderton-McMillin Community Plan adopted by the County had  
25 denied his request for ARL de-designation. The Board found that the County's process -  
26 considering de-designations through community plans - and the County's criteria complied  
27  
28

---

29 <sup>145</sup> PCC 19A.30.010, LU-UGA Obj. 6.1.f and g; PCC 19C.10.050.E.6.e and f; PCC 19A.30.070, LU-Ag Obj.  
30 18.D.2.e.

31 <sup>146</sup> 164 Wn.2d at 351-52 (2008).

32 <sup>147</sup> "Person per household" assumptions in the BLR range from 3.11 in Carbonado down to 2.08 in Gig Harbor,  
with Tacoma at 2.33. BLR, Appendix D.

<sup>148</sup> See *TS Holdings v Pierce County*, CPSPGMHB Case No. 08-3-0001, Final Decision and Order (Sep. 2,  
2008).

1 with the GMA and were consistent with the minimum guidelines in WAC 365-190-050. In *TS*  
2 *Holdings*, the Board determined that the ARL de-designation criteria had been properly  
3 considered at the Community Plan level, by the Planning Commission, and by the County  
4 Council.<sup>149</sup> The Board notes that the Alderton-McMillin Community Plan also requires the  
5 City to perform the de-designation analysis for ARL lands it seeks to convert to urban:

6       The city must demonstrate that the requirements for de-designation in the  
7       Comprehensive Plan and the Growth Management Act have been met.<sup>150</sup>  
8

9 The Board concludes that the T-6 policy language changes do not remove the requirements  
10 to apply the de-designation criteria and process if ever agricultural resource lands are  
11 considered for inclusion in the UGA.  
12

13 The Board is not persuaded by Futurewise's assertion that the adopted UGA expansion  
14 criteria "fail to provide any protection for agricultural land of long-term commercial  
15 significance."<sup>151</sup> While the absolute prohibition Futurewise requests would be consistent with  
16 the GMA and would simplify the task of citizen growth management watchdogs, Futurewise  
17 has **failed to carry its burden** of demonstrating that the GMA *requires* county plans to  
18 incorporate such a prohibition.  
19  
20

## 21 **Conclusion**

22 The Board finds and concludes that Futurewise has failed to carry its burden of  
23 demonstrating that the County's adoption of Amendment T-6 did not comply with RCW  
24 36.70A.060, .110, and .170 as alleged in Legal Issue FW 2. The remaining allegations of  
25 FW 2 were **abandoned**. Legal Issue FW 2 is **dismissed**.  
26

### 27       • **AMENDMENT U-5, Eatonville Employment Center**

28 Legal Issue FW 4 asserts that the County's adoption of Amendment U-5 violates RCW  
29 36.70A.070, .110, and .115 "by expanding the urban growth area beyond what is needed to  
30  
31

32 <sup>149</sup> *Id.* at 26, 31, 33.

<sup>150</sup> County Response, Attachment A, at 13.

<sup>151</sup> Futurewise Prehearing Brief at 13.



1 accommodate the County's adopted population projections." <sup>152</sup> Futurewise challenges  
2 Amendment U-5 which adds land for a designated Employment Center in the vicinity of the  
3 Town of Eatonville.

4  
5 Statement of Facts

6 Amendment U-5 adds 80 acres of land to the Town of Eatonville's UGA for a proposed  
7 employment center. Concurrently, Amendment U-6 decreased the UGA adjacent to  
8 Eatonville's municipal limits by 29.49 acres, for a net UGA expansion of 50 acres. <sup>153</sup> The 80  
9 acres of Amendment U-5 are "currently part of an active gravel quarry which is slated to be  
10 fully reclaimed within the next 5-10 years." <sup>154</sup> Twenty-seven acres of the Lynne Creek  
11 Quarry were previously designated agricultural resource land <sup>155</sup> and 53 acres were  
12 designated rural (R-20). Eatonville has identified the area as usable for industrial purposes,  
13 with a designation of EC (employment center). The Town states that when "reclaimed, this  
14 area will be ideal for light industrial development due to its proximity to residential  
15 populations (labor) in Eatonville and because of its strategic location along Tacoma Rail  
16 facilities..." <sup>156</sup> Extensions of all necessary urban services to the area have been included in  
17  
18  
19  
20  
21

---

22 <sup>152</sup> **FW 4.** By adopting *Amendment No. U-5*, to re-designate 80 acres from ARL and R20 to EC and add the  
23 land to the urban growth area, has Pierce County failed to adopt comprehensive plan provisions and  
24 development regulations to conserve natural resource lands and protect them from incompatible  
25 development, expanded the urban growth area beyond what is needed to accommodate the county's adopted  
26 population projections, and otherwise failed to comply with GMA Planning Goals 1, 2, 5, 8, 9, 10, and 12 and  
27 with GMA Sections .040, .050, .060, .070, .110, .115, .130, .170, .172, and .177? [The Board notes that  
28 Futurewise's allegations of non-compliance with GMA Sections .040, .050, .060, .130, .170, .172 and .177  
29 were not argued or even referenced in its prehearing brief. Similarly, the prehearing brief makes no argument  
30 but only cursory reference to some of the listed GMA Planning Goals 1,2,5,8,9,10 and 12. These elements of  
31 FW Issue 4 are deemed **abandoned.**]

32 <sup>153</sup> County Response at 43.

<sup>154</sup> Ex. CP 167 at 3.

<sup>155</sup> The Staff Report stated that, because the area consists of a rock quarry, the area is not characterized by  
productive agricultural soils and the designation should be removed. Ex. CP 99, at 195-196. The Board is  
troubled by the absence of any de-designation analysis, topographical or geological mapping. However,  
Futurewise has not challenged this part of the decision, and it must stand. The Board is prohibited from issuing  
"advisory opinions" on matters not raised in a petition for review. RCW 36.70A.290(1).

<sup>156</sup> Ex. CP 167, at 2.

1 the Town's capital facilities plan.<sup>157</sup> The Staff Report concluded the proposal was consistent  
2 with Pierce County Comprehensive Plan locational criteria for Employment Centers.<sup>158</sup>

3  
4 Eatonville's application for the UGA expansion indicated that it has few large parcels  
5 available for industrial development and no large vacant sites located close to rail, airport,  
6 and the state highway.<sup>159</sup> The 2007 BLR indicates zoned commercial/industrial employment  
7 capacity in the Town of Eatonville is just slightly more than the 2022 employment targets.<sup>160</sup>  
8 However, Eatonville's UGA is significantly oversized for the allocated population  
9 projection.<sup>161</sup> Further, Eatonville's Buildable Land Inventory includes a number of large  
10 parcels of vacant land and significant underdeveloped residential lands that might be  
11 considered for redesignation to accommodate needed employment.<sup>162</sup>

12  
13  
14 In addition, Eatonville had applied for an even larger Employment Center expansion in the  
15 County's 2007 Plan amendment cycle. The County granted a portion of that request, adding  
16 land to the southwest of the present U-5 lands.<sup>163</sup> The record doesn't indicate whether any  
17 of the 2007 UGA addition has been developed for employment purposes.

18  
19 Applicable Law

20 As previously set forth, the size of a UGA must be based on an OFM population projection  
21 and a county must include "areas and densities sufficient to permit the urban growth"  
22 projected to occur over the next 20 years.<sup>164</sup> In the *Thurston County* ruling, the Supreme  
23 Court addressed the question whether the OFM population projection places any upward  
24 bounds on the size of a County's UGA. The Court reasoned:<sup>165</sup>

25  
26  
27  
28 <sup>157</sup> *Id.* at 4.

29 <sup>158</sup> Ex. CP 99, at 196, citing PCC 19A.30.150A.

30 <sup>159</sup> Ex. CP 167, at 2, 4.

31 <sup>160</sup> BLR, at 338.

32 <sup>161</sup> *Id.* at 79, Tables 7 and 8.

<sup>162</sup> *Id.* Appendix A, Town of Eatonville.

<sup>163</sup> Staff Report, Ex CCP 99 at 198-199.

<sup>164</sup> RCW 36.70A.110(2).

<sup>165</sup> 164 Wn.2d at 351-352.

1 While the statute explicitly states the UGA must be large enough to  
2 accommodate the projected population increase, it does not specifically state the  
3 projected population limits the amount of land that may be designated urban. In  
4 *Diehl*, the Court of Appeals held an OFM population projection constitutes both  
5 the minimum and maximum size of a UGA. 94 Wn. App at 653. The court  
6 reasoned that although the GMA does not explicitly restrict the size of a UGA,  
7 “[o]ne of the goals of the GMA is to ‘[r]educe the inappropriate conversion of  
8 undeveloped land into sprawling, low-density development.’ *Id.* If the size of a  
9 UGA is not limited, rural sprawl could abound. Thus, although the GMA does not  
10 explicitly limit the size of a UGA, to give meaning to the market supply factor  
11 provision and in light of the GMA goal of reducing sprawl, we hold a county’s  
12 UGA provision cannot exceed the amount of land necessary to accommodate the  
13 urban growth projected by OFM, plus a reasonable land supply factor.

14 The Court cited to a law review article:<sup>166</sup>

15 Oversized UGAs are perhaps the most egregious affront to the fundamental  
16 GMA policy against urban sprawl, and it is this policy that the UGA requirements,  
17 more than any other GMA mandate, are intended to further.

18 In 2009, RCW 36.70A.110(2) was amended to provide (new language in italics):

19 Based upon the growth management population projection ... the county and  
20 each city within the county shall include areas and densities sufficient to permit  
21 the urban growth that is projected to occur in the county or city for the  
22 succeeding twenty-year period. ... *As part of this planning process, each city  
23 within the county must include areas sufficient to accommodate the broad range  
24 of needs and uses that will accompany the projected urban growth, including, as  
25 appropriate, medical, governmental, institutional, commercial, service, retail, and  
26 other nonresidential uses.*

27 RCW 36.70A.115 was also amended to provide (new language in italics):

28 Counties and cities ...shall ensure that, taken collectively, adoption of  
29 amendments to their comprehensive plans and/or development regulations  
30 provide sufficient capacity of land suitable for development within their  
31 jurisdictions to accommodate their allocated housing and employment growth,  
32 *including the accommodation of, as appropriate, the medical, governmental,  
educational, institutional, commercial, and industrial facilities related to such*

---

<sup>166</sup> Brent D. Lloyd, *Accommodating Growth or Enabling Sprawl? The Role of Population Growth Projections in Comprehensive Planning under the Washington State Growth Management Act*, 36 Gonz. L. Rev. 73, 105 (2001)

1        *growth*, as adopted in the applicable countywide planning policies and consistent  
2        with the twenty-year population forecast from the office of financial management.

3        Thus, Urban Growth Areas must be sized in accordance with population projections, taking  
4        into consideration the non-residential uses needed to support the population. Within those  
5        population-based UGAs, cities and counties must designate areas to accommodate  
6        employment and services.  
7

8        *Board Discussion and Analysis*  
9

10        As held by the Supreme Court in *Thurston County*, the GMA limits Urban Growth Areas to  
11        the land needed to accommodate the OFM twenty-year population projection, plus a  
12        reasonable market factor. Pierce County has more than enough capacity in its UGAs  
13        county-wide (and in Eatonville, specifically) to accommodate the OFM projected residential  
14        population.  
15

16        The County's 2007 Buildable Lands Report analyzed the land available in Eatonville's UGA  
17        to accommodate the adopted population and employment targets to 2022.<sup>167</sup> The BLR  
18        concluded that Eatonville needs to add 257 housing units and has the land capacity for  
19        1,837 more units.<sup>168</sup> The BLR identified 49.28 acres of land available for commercial and  
20        17.33 acres available for industrial employment growth in the Town of Eatonville, together  
21        providing additional employment capacity of 1,147 against adopted employment targets of  
22        1,112.<sup>169</sup> Pierce County points out that the BLR methodology reflected in the 2007 analysis  
23        "has been county-wide and not city/town/unincorporated UGA specific."<sup>170</sup> Thus "one cannot  
24        extrapolate the data for a specific location like the UGA surrounding Eatonville and its  
25        employment targets." In particular, the County asserts that employment opportunities in the  
26  
27  
28  
29  
30

31        <sup>167</sup> BLR, at 69

32        <sup>168</sup> *Id.* at 79, Table 7 and 8.

<sup>169</sup> *Id.* at 80-81, Tables 9, 10, and 11.

<sup>170</sup> County Response, at 50.

1 Eatonville area must provide for not only the Town population but for the additional  
2 residents of the contiguous unincorporated UGA.<sup>171</sup>

3  
4 Futurewise counters that no further UGA expansion can be allowed, without a new  
5 population projection and new land capacity analysis. Futurewise points to the legislative  
6 amendments to the GMA enacted in 2009 as demonstrating the OFM population projection  
7 is the basis for UGA sizing *for all purposes*, including non-residential uses. These  
8 amendments to the Growth Management Act echo the Supreme Court's ruling that the land  
9 in the UGA for all uses – residential, commercial, industrial, and others – must be  
10 "consistent with the twenty-year population forecast" made by OFM and then adopted and  
11 allocated by the county. By implication, accommodating additional non-residential uses is  
12 not a justification for incremental UGA expansion.  
13

14  
15 Board decisions from the Eastern and Western Boards have wrestled with the question of  
16 whether land that has better characteristics for a desired economic purpose can be added  
17 to a UGA which is already oversized. In *Brodeur, et al v Benton County*<sup>172</sup> the Eastern  
18 Board found non-compliant a proposed commercial/retail UGA extension that would link the  
19 City of West Richland to a potential freeway interchange. The Board found no support in the  
20 record that additional commercial land was needed when the existing UGA contained  
21 hundreds of acres of vacant and under-developed land. In *Kittitas County Conservation v*  
22 *Kittitas County*,<sup>173</sup> the Eastern Board found a proposed commercial extension of the UGA to  
23 link to the interstate and accommodate big-box stores was not supported in the record,  
24 where ample vacant commercial land was already available in the UGA. In *DCCRG v.*  
25 *Douglas County*,<sup>174</sup> the Eastern Board remanded the County's expansion of the UGA to  
26 include 84 acres for commercial use.  
27  
28  
29  
30

31  
32 <sup>171</sup> See BLR, at 338-339, Table 18.

<sup>172</sup> (West Richland UGA), EWGMHB Case No. 09-1-0010c, Final Decision and Order (Dec. 2, 2009).

<sup>173</sup> EWGMHB Case No. 07-1-0004c, Order on Compliance (May 26, 2010), at 17-24.

<sup>174</sup> EWGMHB Case No. 09-1-0011, Final Decision and Order (Jan. 19, 2010).

1 In order to comply with the GMA and its stated duty, Douglas County is  
2 required to ensure the East Wenatchee UGA is the appropriate size in  
3 relationship to OFM population projections. As noted above, there is nothing in  
4 the Record indicating Douglas County performed the necessary supporting  
analysis, whether for residential or commercial land needs.<sup>175</sup>

5  
6 See also, *ICAN v Jefferson County*<sup>176</sup>, (County failed to “link the potential commercial lands  
7 to the land use capacity analysis”).

8  
9 In each of these cases, the anti-sprawl/UGA sizing requirements of the GMA trump the  
10 economic development goals of the local jurisdiction. That is because the Boards, while  
11 giving deference to the planning choices of cities and counties consistent with the GMA, are  
12 tasked with determining compliance with the goals and requirements of the Act.

13  
14 In the present case, Eatonville and its associated UGA comprise an area significantly larger  
15 than needed to accommodate the population targets. In the Town, the land currently  
16 designated for industrial uses is only a little more than needed to accommodate  
17 employment targets. However, if the Town or County find they have not planned adequately  
18 for all the non-residential needs of the Eatonville UGA, the remedy is re-designation of  
19 excess residential land for industrial or other uses, not incremental expansion of the UGA.  
20 The Buildable Lands Inventory shows graphically how much vacant and undeveloped land  
21 is included in the Town and its associated UGA.<sup>177</sup>

22  
23  
24 The Board finds that Pierce County by Amendment U-5 has expanded the Eatonville UGA  
25 without evidence in the record establishing additional urban land is necessary to  
26 accommodate the County’s adopted OFM 20-year population projection with associated  
27 uses. Pierce County has more than enough capacity in its UGA county-wide (and in  
28 Eatonville, specifically) to accommodate the OFM projected residential population and  
29  
30

31  
32 <sup>175</sup> *Id.* at 31.

<sup>176</sup> WWGMHB Case No. 04-2-0022, Final Decision and Order (May 2005).

<sup>177</sup> BLR, Appendix, Town of Eatonville.

1 associated non-residential uses. No further UGA expansion can be allowed, without a new  
2 land capacity analysis or population allocation.<sup>178</sup>

3  
4 In short, the holding of the Supreme Court in *Thurston County* applies here: “[W]e hold a  
5 county’s UGA provision cannot exceed the amount of land necessary to accommodate the  
6 urban growth projected by OFM, plus a reasonable land supply factor.” The Board finds that  
7 Pierce County’s Amendment U-5 adds impermissibly to an already-oversized UGA and is  
8 **clearly erroneous**. The Board is left with a firm and definite conviction that a mistake has  
9 been made. The Board concludes that the County’s action in adopting Amendment U-5  
10 violates the GMA requirement to designate urban growth areas based on the OFM 20-year  
11 population projection and **does not comply** with RCW 36.70A.110.<sup>179</sup>

### 12 Conclusion

13  
14 The Board finds and concludes that Pierce County’s adoption of Amendment U-5 was  
15 clearly erroneous in that the County **failed to comply** with RCW 36.70A.110. The Board  
16 remands this portion of Ordinance No. 2009-71s to the County for action to bring its Plan  
17 into compliance with the statute.

### 18 Invalidity

19  
20 As the Board noted, *supra*, the Board may enter an order of invalidity upon a determination  
21 that the continued validity of a non-compliant ordinance substantially interferes with the  
22 goals of the GMA.<sup>180</sup> The petitioner bears the burden of demonstrating substantial  
23 interference with GMA goals. Futurewise’s argument in this regard is contained in a single  
24

25  
26  
27 <sup>178</sup> The Staff Report in support of Eatonville’s application does not constitute a land capacity analysis.

28 <sup>179</sup> In concurrence, Board member Pageler notes that the County (and the Town) may consider various  
29 choices in the light of local circumstances. One strategy might be a review of densities and allowed uses  
30 within the urban area, as set forth in RCW 36.70A.215(3), with a view to identifying and rezoning the large lot  
31 that would accommodate a major new employer, if one is found. Another option might be to remove  
32 undeveloped land from the UGA to offset the proposed expansion, recognizing that 29 acres has already been  
withdrawn under Amendment U-6. A new land capacity analysis might be undertaken. Or the County and  
Town may defer to the next OFM population projection with a view to increased allocation for Eatonville and its  
UGA.

<sup>180</sup> RCW 36.70A.302(1)(b).

1 conclusory sentence: “[Amendment U-5] frustrates the goals of the GMA to reduce sprawl,  
2 protect the environment, encourage urban growth within established UGAs, and promote  
3 long-term economic prosperity.”<sup>181</sup>

4  
5 The Board is not persuaded that continued validity of the Amendment U-5 provisions during  
6 the period of remand to the County will substantially interfere with the Goals of the GMA.

7 The request for a determination of invalidity is **denied**.

8  
9 • **AMENDMENT C-3 GRAHAM COMMUNITY PLAN – ELECTRONIC SIGNS**

10 Legal Issue Halmo 2.a-c asserts that the County’s adoption of Amendment C-3 violates the  
11 GMA requirement to protect rural character and other provisions. By Amendment C-3,  
12 Pierce County amended the Graham Community Plan to allow electronic message boards.  
13 The Halmo petitioners challenged the amendment, first, for failing to protect the area’s rural  
14 character, second, for inconsistency with the County’s Comprehensive Plan, and third, for  
15 violating the County’s duties with respect to traffic management and safety.  
16

17  
18 ***Does Amendment C-3 protect the rural character of the Graham area? NO***

19 Legal Issue Halmo 2.a asserts that Amendment C-3 does not comply with RCW  
20 36.70.70A.070(5) which requires “measures to protect the rural character” of designated  
21 rural areas.<sup>182</sup>  
22

23 *Applicable Law*  
24  
25

26 <sup>181</sup> Futurewise Prehearing Brief at 25.

27 <sup>182</sup> **Halmo 2.a.** Does the Amendment [C-3] fail to comply with the RCW 36.70A.020 (10), the Act’s  
28 environmental protection goal, RCW 36.70A.030 (15), RCW 36.70A.070 (5), WAC 365-195-330, Pierce  
29 County Comprehensive Plan Goals 19A.20.050, Pierce County Comprehensive Plan 19A.40, and the Graham  
30 Community Plan’s Community Character and Design and Natural Environment Elements because it is  
31 inconsistent in preserving rural lands, in protecting the rural character, in protecting visual landscapes, and in  
32 assuring visual compatibility with surrounding rural areas through adequate signage control? (citing also  
Pierce County Comprehensive Plan 19A.40.030 RUR Objective 3 and .040 RUR Objective 4, and the Graham  
Community Plan’s Community Character and Design Element (Goal with Objectives, Principles, Standards --  
Objective 14 Principle 1 and Principle 11; Design Intent -- with Objective 15 Principle 3; Objective 19, Principle  
6; Signs -- with Intent and all of Objective 20 and its Principles and Standards; Viewsheds and Aesthetics --  
Intent and Objective 22, Principles 1, 6, 7, and 9) and Natural Environment Element (Goal and Objective 27)



1 RCW 36.70A.070(5) requires a Rural Element in county comprehensive plans:

2 (5) Rural Element. Counties shall include [in their comprehensive plans] a rural  
3 element including lands that are not designated for urban growth, agriculture,  
4 forest, or mineral resources.

5 The rural element has a unique requirement that the County “develop a written record”  
6 concerning its consideration of local circumstances that “explain[s] how the rural element  
7 harmonizes the [GMA] planning goals” and meets GMA requirements.<sup>183</sup> The rural element  
8 “shall include measures that apply to rural development and protect the rural character of  
9 the area, as established by the county, by.... (ii) assuring visual compatibility of rural  
10 development with the surrounding rural area ...”<sup>184</sup>

11  
12 “Rural character” is defined in RCW 36.70A.030(15):

13  
14 (15) “*Rural character*” refers to the patterns of land use and development  
15 established by a county in the rural element of its comprehensive plan:

16 (a) In which open space, the natural landscape, and vegetation predominate over  
17 the built environment;

18 (b) That foster traditional rural lifestyles, rural-based economies, and  
19 opportunities to both live and work in rural areas;

20 (c) That provide visual landscapes that are traditionally found in rural areas and  
21 communities;

22 (d) That are compatible with the use of the land by wildlife and for fish and wildlife  
23 habitat;

24 (e) That reduce the inappropriate conversion of undeveloped land into sprawling,  
25 low-density development;

26 (f) That generally do not require the extension of urban governmental services;  
27 and

28 (g) That are consistent with the protection of natural surface water flows and  
29 groundwater and surface water recharge and discharge areas.

30 The Legislature took the unusual step in 2002 of codifying its findings concerning rural  
31 lands:

32 RCW 36.70A.011. Findings – Rural lands. The legislature finds that this chapter  
is intended to recognize the importance of rural character to Washington’s

---

<sup>183</sup> RCW 36.70A.070(5)(a).

<sup>184</sup> RCW 36.70A.070(5)(c), emphasis added.

1 economy, its people, and its environment, while respecting regional  
2 differences....

3 The findings underscore the requirement for each county to define its rural element and  
4 “develop a local vision of rural character.”<sup>185</sup> While legislative findings do not create  
5 enforceable rights and duties,<sup>186</sup> they may assist the Board and the parties in interpreting  
6 and applying the requirements of the Act.  
7

8 Statement of Facts  
9

10 The Graham Community Plan was adopted by Pierce County in 2006 as part of the  
11 County’s Comprehensive Plan.<sup>187</sup> The Graham area encompasses 76 square miles in  
12 south-central Pierce County. The Graham area is largely rural, only four percent being in the  
13 UGA.<sup>188</sup> Bethel School District is a large public school district with twelve schools in the  
14 Graham area; there are two other public school districts and a number of private schools in  
15 the Graham area.  
16

17 The Graham Community Plan defines rural character in considerable detail, with specific  
18 focus on signage. The Plan’s introductory description of current conditions identifies un-  
19 regulated signage as a major challenge to community rural character.<sup>189</sup> The Plan speaks of  
20 signs in disrepair, buildings “plastered with random signage,” businesses using standard  
21 corporate logos which reflect “Anywhere America,” signs attached to utility poles and  
22 fences:  
23

24 The proliferate use and combination of sandwich boards, banners, streamers,  
25 blinking lighting, and temporary signage creates a cluttered cacophony that is  
26 visually disturbing ....<sup>190</sup>  
27

28  
29 <sup>185</sup> *Id.*

30 <sup>186</sup> *Judd v. Am. Tel. and Tel. Co.*, 251 Wn.2d 195, 203 (2004); *Aripa v Dept. of Social and Health Services*, 91  
31 Wn.2d 135, 139 (1978); *International Union of Operating Engineers v Sand Point Country Club*, 83 Wn.2d 498,  
505 (1974).

32 <sup>187</sup> The Graham Community Plan is Halmo Ex. 27.

<sup>188</sup> *Id.* at 43.

<sup>189</sup> *Id.* at 81.

<sup>190</sup> *Id.* at 81.

1 The Community Plan identifies scenic vistas of Mount Rainier, especially from various  
2 roadways, as a signature characteristic of the Graham area which is adversely affected by  
3 unregulated signage.<sup>191</sup> And the Plan commits to reduce light pollution in the night sky  
4 caused by roadside signs and other uses.<sup>192</sup> Plainly, regulation and design of signage is a  
5 major element of the Graham Community Plan and quite central to its “local vision of rural  
6 character.”<sup>193</sup>

8 In describing the desired community character, the Graham Plan states: “Sign regulations  
9 should be implemented to foster the rural character and a unified sense of design...”<sup>194</sup>

11 Accordingly, sign regulation was one of seven Goals adopted in the Graham Plan to  
12 enhance the rural character of the Plan area:

13 Ensure that signs in the plan area are at a scale and design appropriate to a  
14 rural atmosphere, while accommodating the need to provide information on  
15 events, activities, and businesses in the community.<sup>195</sup>

16 This Goal is followed by an Objective:

17 Design and locate signage in a manner that reflects the rural and historic  
18 character of the plan area.<sup>196</sup>

19 Several pages of Principles and Standards implement the Objective of reflecting rural  
20 character through sign regulation. Principle 2 requires:

22 Design signs with details that reflect a rural character.<sup>197</sup>

23 The adopted Standards for Principle 2 encourage the use of rock and natural materials,  
24 encourage neutral colors, promote a rustic feel, prohibit glare, and blend with the rural and  
25 natural landscape. Standard 20.2.4, as enacted in 2006, provided:  
26

28 <sup>191</sup> *Id.* at 106 (preserve “existing views of mountain ranges and other scenic vistas as an integral part of the  
29 plan area’s character”); 108 (“preserve and protect significant foreground views along viewing platforms or  
30 passageways such as ... major highways”).

<sup>192</sup> *Id.* at 136 (avoid or shield light sources that “obscure the visibility of stars at night.”)

<sup>193</sup> RCW 36.70A.011.

<sup>194</sup> Graham Community Plan, Halmo Ex. 27, at 82.

<sup>195</sup> *Id.* at 87.

<sup>196</sup> *Id.* at 103.

<sup>197</sup> *Id.* at 104.

1 20.2.4. Prohibit the use of flashing, blinking, spinning or rotating signs or  
2 objects; video signs, roof signs, railing signs, reader board signs, inflatable  
3 signs, and signs attached to private light standards.<sup>198</sup>

4 Amendment C-3, at issue here, amended Standard 20.2.4 to allow electronic message  
5 boards, at the request of the Bethel School District. The School District's application for the  
6 amendment stated:  
7

8 Reader Boards for Civic uses are *allowed in all other community plans* and  
9 Pierce County Code, Chapter 18.20 that affect the Bethel School District. This  
10 request is *not an exception to the rule*, rather it is a request to make the Graham  
11 Community Plan *consistent with other plans and regulations* in Pierce County.<sup>199</sup>

12 However, the School District was not requesting reader boards, which are by definition  
13 manual, but rather electronic message boards.<sup>200</sup> The Graham Land Use Advisory  
14 Commission (LUAC) considered the School District's amendment first on March 10, 2009.<sup>201</sup>  
15 The LUAC voted to narrow the proposal, which allowed electronic signs for "public and civic  
16 institutions and organizations;" instead, an on-site electronic reader board sign would be  
17 allowed to each "public education facility and public services facility" and "will be tied into" a  
18 central emergency information system.<sup>202</sup>  
19  
20  
21  
22

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23 <sup>198</sup> *Id.*

24 <sup>199</sup> Ex. CP-75, p. 3, emphasis added.

25 <sup>200</sup> PCC 18.25.030 defines "Sign, Reader Board" as:

26 ... a sign that is designed so that characters, letters, or illustrations can be changed or rearranged by  
27 hand without altering the face or surface of the sign.

28 PCC 18.25.030 defines "Sign, Electronic message" as:

29 ... an electronically controlled sign which consists of a pattern of lights or other technology which is  
30 capable of using lights to depict action, create a special effect, or vary the message being  
31 communicated. A sign on which there is only an electronic or mechanical indication of time and/or  
32 temperature shall be considered a "time and temperature" sign.

<sup>201</sup> Ex. CP 74. The minutes reflect: "The Commission explained that the Graham Community Plan specifically  
did not want the area signs to look like the South Hill area. Other applicants' requests for this type of signage  
have been turned down by this Commission and their need is no less important than that of the schools. If this  
type of sign is approved it could open a flood gate. This type of signage could create hazardous driving  
conditions."

<sup>202</sup> *Id.*

1 The Graham LUAC lacked a quorum at its subsequent June 9, 2009 meeting; however,  
2 those Commissioners present concluded that the "civic institution" category was too broad  
3 and recommended that signs be permitted "...only for administrative government facilities,  
4 public school, and public safety facilities with priority for electronic reader board signs given  
5 to emergency notice."<sup>203</sup>  
6

7 The Pierce County Planning Commission subsequently took up the issue. The Planning  
8 Commission requested information from County staff on the use of reader boards in other  
9 community plans. That information was provided in Staff Supplemental Report No. 2 dated  
10 July 15, 2009.<sup>204</sup> The Planning Commission voted to support the proposal with restrictions  
11 to schools and public agencies only.<sup>205</sup> As it stated in its formal report to the County Council:

13 Planning Commission is recommending approval of this amendment with one  
14 amendment to remove civic uses from the amendment. Based upon testimony  
15 by Graham community members and the Bethel School District, it is in the  
16 interest of the community to continue to restrict electronic readerboard signs for  
17 those uses that are not public to maintain the integrity of the proposal to use the  
signs for public information, including emergency messages.<sup>206</sup>  
18

19 The Staff Report recognized that electronic message boards were inconsistent with the  
20 Graham Plan in many respects, and suggested possible mitigations:

21 Electronic reader board signs are not typically viewed as reflecting the rural and  
22 historic character of the Graham area. To the extent that the proposed  
23 amendment would allow for electronic signs within sight of critical areas, it could  
24 impact some functions and processes in those critical areas. .... The proposed  
25 amendment would have an effect on the character of the Graham Community  
26 Plan area. Allowing for electronic reader board signs would introduce a type of  
27 lighted sign not currently allowed. .... Appropriate sign design standards would  
28 need to be implemented to ensure the impacts of the lighting on the rural and  
historic character of the area, as well as passing motorists, pedestrians, and  
others would be minimized."<sup>207</sup>  
29

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30  
31 <sup>203</sup> Ex. CP 690, 694.

<sup>204</sup> Ex. CP 693, at 2-3.

<sup>205</sup> Ex. CP 697, at 8.

<sup>206</sup> Ex. CP 709, at 3.

<sup>207</sup> Ex. PCC 99, at 223.

1 The Staff Report conclusion was ambivalent:

2       This proposal is one that comes down to *community preference*. ... The staff  
3 recommendation to approve is more a recommendation that the amendment can  
4 be approved, with appropriate implementing standards, with no compromise to  
5 objectives in the community plan. Denial would be equally consistent with the  
6 community plan.<sup>208</sup>

7 In fact, electronic message signs, except for time/temperature signs, are widely prohibited in  
8 rural Pierce County. The Pierce County Code for Non-community Plan Areas (more than  
9 50% of the County) allows reader board signs, with certain restrictions, but not electronic  
10 message signs.<sup>209</sup> As the Supplemental Staff Report indicated, the Community Plans for  
11 Frederickson, Gig Harbor Peninsula, and Key Peninsula allow only time/temperature  
12 signs.<sup>210</sup> The Mid-County and South Hill plans prohibit electronic signs, except temporary  
13 traffic control signs in the right-of-way. Upper Nisqually Valley – like Graham, a largely rural  
14 community – prohibits such signs. The Alderton-McMillin Plan prohibits “trailing electronic  
15 signs;” the Parkland-Spanaway-Midland plan prohibits trailing signs with pulsing, streaming,  
16 or frequently-changing text; and the Browns Point-Dash Point Plan allows electronic  
17 message boards only at the Town Center complex or in other limited uses.<sup>211</sup> In sum,  
18 electronic message boards are almost uniformly rejected in the community plans for Pierce  
19 County, especially for the County’s rural areas.  
20  
21

22 The Pierce County Council’s Community Development Committee and Pierce County  
23 Council made additional amendments to the proposal before final passage. As enacted,  
24 Amendment C-3 modified the Graham Community Plan prohibition on flashing signs and  
25 added an allowance for electronic message signs:  
26

27       20.2.4. Prohibit the use of flashing, blinking, spinning or rotating signs or  
28 objects; video signs, roof signs, railing signs, reader board signs except as  
29  
30

31 <sup>208</sup> *Id.* at 224 (emphasis added).

32 <sup>209</sup> PCC 18B20.120 and .125, Halmo Reply Ex.B.

<sup>210</sup> See Ex. CP 693, Supplemental Staff Report #2, at 2, for this and the following information.

<sup>211</sup> *Id.*

permitted in Standard 20.2.7, inflatable signs, and signs attached to private light standards.

20.2.7. Allow on-site electronic message signs with static text that changes no more frequently than once every 30 seconds for public safety, public parks and recreation services, education facilities, and religious assembly uses.

The enacted provision thus *prohibits* the use of manual reader boards and *allows* on-site electronic message signs for an array of public and private facilities, including recreational services and religious facilities. Other than existing non-conforming signs, all new message boards for schools, fire stations, recreation facilities, and churches in the Graham area will be electronic. The County's record indicates no analysis of how many facilities and locations might be involved.<sup>212</sup> The County's record contains no evidence concerning cumulative light pollution, view blockage, and driver distraction.

#### Board Discussion and Analysis

The Halmo Petitioners argue first that Graham sign amendments are non-compliant with the GMA requirements to identify and protect rural character.<sup>213</sup> The Board notes with approval that Pierce County, in adopting the Graham Plan, has defined rural character for the Graham area. The GMA acknowledges the importance of local circumstances, and thus allowing each rural community to develop its unique vision of rural lifestyle, as Pierce County does through its community plans, is an appropriate way to implement the requirement for a rural element in the County Comprehensive Plan.

The Graham Community Plan identifies signage control as one of seven key goals to protect its community character, taking into consideration the creeping visual pollution of

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<sup>212</sup> Halmo sought to introduce an exhibit identifying 20 sites along one stretch of 224<sup>th</sup> Street East that are owned by schools, churches and the other facilities designated by Amendment C-3. The County objected and moved to strike. The Board agrees that the exhibit was not provided to the County prior to its action as part of its record and is not of substantial assistance to the Board in its determination. The Motion to Strike Exhibit 52 is **granted**.

<sup>213</sup> **Halmo 2.a.** Does the Amendment [C-3] fail to comply with ... RCW 36.70A.070 (5) ... because it is inconsistent in preserving rural lands, in protecting the rural character, in protecting visual landscapes, and in assuring visual compatibility with surrounding rural areas through adequate signage control?

1 neighboring areas.<sup>214</sup> In the Graham Plan, “rural character” also connotes Mt. Rainier vistas  
2 uncluttered by signs and a night-sky dark enough for star-gazing. The Community Plan  
3 states: “retain the existing scenic country roads in a rural character” and “establish  
4 measures to decrease glare from light sources that obscure the visibility of stars at night.”<sup>215</sup>  
5

6 With this “local vision” of rural character as backdrop, the Graham LUAC considered and  
7 gave equivocal consent (no quorum) to a limited amendment to its sign regulations. The  
8 “community preference,” referred to in the Staff Report, was thus obtained at a LUAC  
9 meeting that lacked a quorum, was obtained under the false assumption that such signage  
10 was allowed in other community plans, and was conditioned on narrowly defining the  
11 potential users of the electronic signs. Having been told that only the Graham Community  
12 disallowed reader boards, the Commission members present stated that “electronic reader  
13 boards” signs should be allowed, at most, for schools and public facilities linked to an  
14 emergency message system.<sup>216</sup>  
15  
16

17 Whether or not such a limited amendment would be consistent with the Graham Community  
18 Plan, Amendment C-3 as ultimately enacted goes substantially beyond these limits.  
19 Amendment C-3 requires message boards in the Graham Plan area to be electronic and  
20 allows them not only for schools and public safety facilities that might be linked to an  
21 emergency message system but also for parks, recreational and religious facilities. There is  
22 no analysis in the record of the extent of such signage possible along the major roads in the  
23 Graham area.<sup>217</sup> Certainly there is nothing to contradict Petitioners’ assertions that some  
24 roads could be severely impacted.<sup>218</sup>  
25  
26  
27  
28  
29

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30 <sup>214</sup> Halmo Ex. 27, at 81.

31 <sup>215</sup> *Id.* at 207, 136.

32 <sup>216</sup> Ex. CP 690, 694.

<sup>217</sup> The proposal to include religious facilities was added long after the Staff Report.

<sup>218</sup> The County’s response at the Hearing on the Merits was that electronic signs are expensive and therefore will not be widely used.



1 This Board has had few cases involving the definition of rural character, and generally, the  
2 difficulty is that the county plan fails to define rural character. Here, commendably, the  
3 adopted Graham Community Plan defines the rural character it seeks to preserve. The Plan  
4 clearly indicates the role of signage restrictions in preserving the rural character of the area.

5  
6 Similarly, the Board has had few opportunities to assess the Rural Element requirements for  
7 preserving “visual landscapes” and assuring “visual compatibility.”<sup>219</sup> In the present case,  
8 the Graham Community Plan gives definition to the visual elements that comprise the rural  
9 character it seeks to preserve. Amendment C-3 is directly at odds with the Community Plan  
10 Vision and Objectives.  
11

12  
13 The Board searched the record to see whether there was substantial evidence of any “local  
14 circumstances” supporting this revision to the Graham vision of its rural character. The  
15 record only went so far as (1) the School District’s request for signs on its schools and (2)  
16 the notion that emergency notifications through reader boards at schools and public safety  
17 facilities might be useful. The record was clear that the Graham community wished to limit  
18 the Amendment, if approved at all, to schools and an emergency message system.<sup>220</sup> The  
19 record contains no evidence at all of local circumstances supporting the County Council’s  
20 extension of electronic signage to recreation and religious facilities.  
21

22  
23 A recent decision by the Court of Appeals, *Suquamish Tribe v CPSGMHB*, reversed this  
24 Board’s approval of a Kitsap County rural clustering program, saying that “substantial  
25 evidence does not support the Board’s conclusion that the [program] protect[s] rural  
26 character.”<sup>221</sup> In the present case, the Board does not find substantial evidence in Pierce  
27 County’s record that Amendment C-3 protects rural character as defined in the Graham  
28 Plan. The Board is left with a definite and firm conviction that a mistake has been made.  
29  
30  
31

32 <sup>219</sup> RCW 36.70A.070(5)(c)(ii), .030(15)(c).

<sup>220</sup> The Planning Commission also supported this limitation. Ex. CP 697, PCC 127.

<sup>221</sup> Case No. 30197-5-II (July 7, 2010), Slip Op, at 23.

1 Conclusion

2 The Board finds and concludes that the County's adoption of Amendment C-3 was **clearly**  
3 **erroneous**. The Amendment **does not comply** with RCW 36.70A.070(5), as defined in  
4 RCW 36.70A.030(15) and as explained in the legislative findings of RCW 36.70A.011.  
5

6 **Is Amendment C-3 consistent with County policies for consistency among**  
7 **community plans? NO**

8 Legal Issue Halmo 2.b asserts that Amendment C-3 is not consistent with various County  
9 plan provisions and policies.<sup>222</sup> The Halmo Petitioners contend that Amendment C-3 is  
10 contrary to the County's policies for consistency among Community Plans and between the  
11 Community Plans and the Comprehensive Plan. Halmo poses this issue as a matter of the  
12 County singling out the Graham Rural area for an urban-type use that is prohibited in other  
13 rural areas of the County.  
14

15  
16 Applicable Comprehensive Plan Policies

17 The County's Comprehensive Plan favors consistency among community plans.

- 18 • PCC 19A.110.040, Consistency with Plan, CO Objective 4.F states: "Amendments to  
19 community plans shall be undertaken when changes to the Comprehensive Plan  
20 make community plan policies incompatible or inconsistent."  
21
- 22 • PCC 19A.110.050 Consistency with Development Regulations, CO Objective 5.A.3  
23 states: "Communities may recommend changes to the development regulations to  
24 achieve the desired character as articulated in an adopted community plan.  
25 Proposed new regulations shall be able to be applied to similar situations or locations  
26 in other parts of the County."  
27

28 Board Discussion and Analysis  
29

30  
31 <sup>222</sup> **Halmo 2.b.** Does the Amendment [C-3] take action inconsistent with RCW 36.70A.020(2), the GMA sprawl  
32 reduction goal, and Pierce County Comprehensive Plan 19A.110 because it results in less stringent signage  
controls affecting only the largely rural Graham Community Plan area? (citing Pierce County Comprehensive  
Plan 19A.110.020 CO Objectives 2.A.2 and A.3 and 19A.110.040 CO Objectives 4 and 5.)

1 As documented above, prior to Amendment C-3, the Graham Community Plan was  
2 consistent with other community plans and with the County's regulations for non-community  
3 plan rural areas in prohibiting or greatly restricting electronic message signs. The record  
4 indicates that other Pierce County community plans having significant rural areas generally  
5 prohibit electronic message boards. The record contains no evidence of local  
6 circumstances, other than the School District's request, supporting the notion that the  
7 largely-rural Graham area uniquely needs increased messaging.  
8

9  
10 The County's policy supporting amendments to community plans to ensure consistency  
11 suggests that other rural communities will come under pressure to allow electronic signage.  
12 However, the Staff Report failed to assess the impact of allowing electronic message boards  
13 for schools, churches and similar facilities everywhere in the County's rural areas.  
14

#### 15 Conclusion

16 The Board's conclusion that adoption of Amendment C-3 was clearly erroneous is  
17 reinforced by the County's policies concerning consistency among community plans.  
18

#### 19 ***Does Amendment C-3 violate GMA traffic management and safety requirements? NO***

20 Legal Issue Halmo 2.c asserts that Amendment C-3 disregards the County's obligations for  
21 traffic management and safety.<sup>223</sup> Halmo's Legal Issue 2.c cites WAC 365-195-325 and  
22 references a number of non-GMA statutes. The County moved to dismiss Halmo's  
23 challenges of non-compliance with the GMA procedural guidelines and with non-GMA  
24 statutory provisions.<sup>224</sup> The Board allowed briefing and argument on this issue,<sup>225</sup> but  
25 concludes that Halmo has failed to make a case based on any requirement in the GMA.  
26  
27

28  
29 <sup>223</sup> **Halmo 2.c.** Does the Amendment [C-3] lessen support for the substantial, legitimate government interest to  
30 protect public traffic safety along highways and roadways by increasing distracting sign lighting and glare, thus  
31 making it inconsistent with the basic tenet of the Growth Management Act that land use actions should protect  
32 the public interest? (citing WAC 365-195-325 which conforms with and is consistent with the State's  
transportation goal policies RCW 47.04.280 and its companion requirements RCW 47.04.070, RCW 47.42.020  
(7) and (8), RCW 47.42, RCW 47.36.180, and WAC 468-66-050).

<sup>224</sup> Halmo's Legal Issue 2.c does not allege violation of non-GMA statutes but references them as informing a  
GMA procedural guideline – WAC 365-195-325.

1 At best, Halmo's assertions concerning traffic safety are based on the "rural character" of  
2 roads in the Graham rural area – narrow, with little to no walking space along paved or  
3 dirt/gravel surfaces, frequently bordered by deep drainage ditches, and generally without  
4 overhead street lighting.<sup>226</sup> Thus, one might speculate that the motorist distraction caused  
5 by electronic message boards may be a more imperative safety factor in the rural area.  
6 However, Halmo fails to link this safety issue to any GMA requirement. Because there is no  
7 GMA foundation for this issue, Halmo's proffered exhibits – [Wachtel, J. *Safety Impacts of*  
8 *the Emerging Digital Display Technology for Outdoor Advertising Signs*, Final Report, April  
9 2009, and Halmo Exhibits 55 and 56] – are not "necessary or of substantial assistance" to  
10 the Board in its determination. Halmo's request to supplement the record is **denied** and the  
11 County's motion to strike is **granted**.  
12

13  
14  
15 The Board finds and concludes that Halmo has failed to carry his burden of demonstrating  
16 any GMA violation related to traffic safety; Halmo Legal Issue 2.c is **dismissed**.  
17

### 18 **Conclusion**

19 The Board finds and concludes that the County's adoption of Amendment C-3 was clearly  
20 erroneous. The Amendment **does not comply** with RCW 36.70A.070(5), as defined by  
21 RCW 36.70A.030(15). The Amendment is inconsistent with the Graham Community Plan  
22 and with the signage restrictions in the majority of the community plans and non-community  
23 plans for most of Pierce County's rural areas. Amendment C-3 is **remanded** to Pierce  
24 County for action consistent with this order.  
25

### 26 **Invalidity**

27 The Halmo Petitioners request a determination of invalidity. Petitioners argue that electronic  
28 signs are an urban use, and that Amendment C-3, by allowing this urban use in a rural area,  
29 substantially interferes with the GMA Goal of reducing urban sprawl.  
30  
31

32  
<sup>225</sup> CPSGMHB Case No. 10-3-0003c, Order on Motions (April 27, 2010).

<sup>226</sup> Halmo Prehearing Brief, at 40.

1 RCW 36.70A.020(2) provides:

2  
3 GMA Planning Goal 2 – Reduce sprawl. Reduce the inappropriate conversion of  
4 undeveloped land into sprawling, low-density development.

5 While the Board might be persuaded that electronic message boards are an urban use, the  
6 Board is not persuaded that the on-site electronic billboards allowed by Amendment C-3  
7 constitute “inappropriate conversion of undeveloped land.” The request for a determination  
8 of invalidity is **denied**.  
9

## 10 VII. ORDER

11  
12 Based upon review of the Petitions for Review, the briefs and exhibits submitted by the  
13 parties, the GMA, prior Board orders and case law, having considered the arguments of the  
14 parties and having deliberated on the matter, the Board ORDERS:

- 15 1) Petitioner Futurewise has failed to carry the burden of proof in demonstrating that  
16 Pierce County’s adoption of Amendments U-7 and T-6 to Ordinance No. 2009-17s  
17 were clearly erroneous. Legal Issue FW 1 as it pertains to Amendment 7 and  
18 Legal Issue FW 2 pertaining to Amendment T-6 are **dismissed**.  
19  
20 2) Pierce County’s adoption of Ordinance No. 2009-17s Amendment U-5 was  
21 **clearly erroneous** and **does not comply** with the urban growth area  
22 requirements RCW 36.70A.110.  
23  
24 3) Pierce County’s adoption of Ordinance No. 2009-17s Amendment U-8a was  
25 **clearly erroneous** and **does not comply** with the urban growth area  
26 requirements RCW 36.70A.110 and the consistency requirements of RCW  
27 36.70A.070 (preamble).  
28  
29 4) Pierce County’s adoption of Ordinance No. 2009-17s Amendment C-3 was  
30 **clearly erroneous** and **does not comply** with the requirements of RCW  
31 36.70A.070(5) and the consistency requirements of RCW 36.70A.070 (preamble).  
32

- 1        5)     The Board **remands** Ordinance No. 2009-17s, Amendments U-5, U-8a, and C-3,  
2            to Pierce County to take legislative action to comply with the requirements of the  
3            GMA as set forth in this Order.  
4        6)     Petitioners' requests for a determination of invalidity are **denied**.  
5        7)     The Board sets the following schedule for the County's compliance:  
6

7

Item	Date Due
Compliance Due	November 24, 2010
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	December 8, 2010
Objections to a Finding of Compliance	December 22, 2010
Response to Objections	January 4, 2011
Compliance Hearing – Location to be determined	January 11, 2011 10:00 a.m.

8  
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13

14 DATED this 2nd day of August 2010.

15  
16 \_\_\_\_\_  
17 David O. Earling, Board Member

18  
19 \_\_\_\_\_  
20 Margaret A. Pageler, Board Member

21 Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a  
22 motion for reconsideration pursuant to WAC 242-02-832.

23 Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this  
24 Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration,  
25 together with any argument in support thereof, should be filed with the Board by mailing, faxing or  
26 otherwise delivering the original and three copies of the motion for reconsideration directly to the Board,  
27 with a copy served on all other parties of record. Filing means actual receipt of the document at the  
Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for  
reconsideration is not a prerequisite for filing a petition for judicial review.

28 Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to  
29 superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by  
30 filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V,  
31 Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with  
32 the appropriate court and served on the Board, the Office of the Attorney General, and all parties within  
thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be  
accomplished in person or by mail, but service on the Board means actual receipt of the document at

1 the Board office within thirty days after service of the final order. A petition for judicial review may not  
2 be served on the Board by fax or by electronic mail.

3 Service. This Order was served on you the day it was deposited in the United States mail. RCW  
4 34.05.010(19).  
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1 **LEGAL ISSUES – CPSGMHB Case No. 10-3-0003c**

2 **NORTH CLOVER CREEK**

3 **NCC 1.** Did Pierce County's adoption of *Amendment U-8a* to Ordinance No. 2009-71s  
4 violate the goals and requirements of the GMA as follows:

5  
6 **NCC 1.a.** Is the challenged action in violation of, or inconsistent with, RCW  
7 36.70A.215, Pierce County Development Regulation 19A.30.010 (LU-UGA Objective  
8 6), and 19C.10PCC in that the UGA amendment is inconsistent with the Buildable  
9 Lands Report because there is not a need for additional urban residential lands?  
10 (citing also RCW 36,70A.040, .070, .110, .115, .210, .130, GMA Goals 1,2,5,9, 10,  
11 and 12, PCC 19C.10.055, PCC 19C.10.060B, Countywide Planning Policy for Urban  
12 Growth Areas 1.2 and 2.2, and the Countywide Planning Policies related to buildable  
13 Lands and UGA boundary amendments.)<sup>227</sup>

14 **NCC 1.b.** Is the challenged action in violation of, or inconsistent with, Pierce County  
15 Mid-County Community Plan Standard 1.5.1 and the GMA in that Pierce County  
16 failed to comply with the County's "no net loss policy" for the Rural Separator  
17 designation?

18 **NCC 1.c.** Is the challenged action and the County's failure to preserve natural  
19 neighborhoods and maintain the Urban Growth Boundary on Brookdale Road, a  
20 distinct major arterial, in violation of, or inconsistent with, Countywide Planning  
21 Policies, County Comprehensive Plan provisions and the GMA? (citing CPP Urban  
22 Growth Areas 2.1 and 2.2, RCW 36.70A.011, .110, .210 and the Plan implementation  
23 requirements of .040(3); RCW 36.93.180; and the objectives, principles and criteria of  
24 PCC 19A.40.010, .020, .030, PCC 19A.30.010, .055, .100, and PCC 19C.10.055,  
25 PCC 19C.10, PCC19C.10.060B.)

26 **NCC 1.d.** Did the County fail to comply with the notice and public participation  
27 requirements of RCW 36.70A. 020(11), .035, .130, and .140, PCC19C.10.055, and  
28 County notice requirements when it suddenly and summarily adopted a substitute  
29 zone without compliance with Pierce County's "no net loss policy" for Rural  
30 Separator?

31 **NCC 1.e.** (Removed)

32 <sup>227</sup> At the Prehearing Conference, the County asked the Petitioners to provide more specific reference to the  
elements of the GMA and County plans that they intended to rely on. Petitioner North Clover Creek restated  
their issues to include numerous references. The Board places these additional references in parentheses  
after each issue question.



1 **NCC 1.f.** Is the challenged action in violation of, or inconsistent with, the GMA and  
2 County Comprehensive Plan in that it creates a parcel by parcel development  
3 pattern, increases the likelihood of incompatible uses and densities, and promotes  
4 urban densities in an area not planned for urban services? (citing RCW 36.70A.011,  
5 .040, .060, .070, .110, .115, .130, and .210, GMA Goals 1, 2, 5, 8, 9, 10, 12; the Plan  
6 implementation requirements of RCW 36.70A.040(3), and the objectives, principles,  
7 and criteria of PCC 19A.40.010, .020, .030, 19A.30.010, 055, 100, and PCC  
8 19C.10.055, PCC 19C.10, PCC 19C.10.060B.)

9 **NCC 1.g. [Abandoned]** ~~Is the challenged action in violation of, or inconsistent with,~~  
10 ~~previous GMA Board decisions against Pierce County, including the *Brink* case, 02-3-~~  
11 ~~0010c, in that the County's action is inconsistent with the *Brink* decision, including the~~  
12 ~~fact that the 5.2 acre UGA amendment will be zoned Residential Resource within the~~  
13 ~~MSF designation, but is not part of a large unified critical area?~~

## 14 **HALMO**<sup>228</sup>

15 **Halmo 1.** Did Pierce County's adoption of *Amendment U-8a* to Ordinance No. 2009-71s  
16 violate the goals and requirements of the GMA as follows:

17 **Halmo 1.a.** Does the Amendment fail to comply with WAC 365-195-335<sup>229</sup> and the  
18 County's Comprehensive Plan by expanding the Urban Growth Area for residential  
19 lands when the existing UGA has excess capacity? (citing County's Comprehensive  
20 Plan 19A.30 LU-UGA Objectives 1, 3, 6 and 19A.140 LU-CO Objectives 44-47.)

21 **Halmo 1.b.** Does the Amendment fail to comply with Section 19C.10.055 F of the  
22 County's Comprehensive Plan Procedures for Amendments to the Comprehensive  
23 Plan as well as the Mid-County Community Plan by not adopting a required  
24 companion amendment to ensure "no net loss" of Rural Separator land? (citing Mid-  
25 County Community Plan Land Use Policies [Objectives, Principles, Standards], Rural  
26 Residential, Objective 1, Principal 5 and its Standards.)

27 **Halmo 1.c.** Does the Amendment fail to comply with Pierce County Countywide  
28 Planning Policy UGA-2.2 (Ordinance 2005-52s) and Section 19C.20.040 Boundaries

29 <sup>228</sup> The Restatement of Legal Issues submitted by Halmo Petitioners largely responded to the County's request  
30 for a more definite statement of the specific elements of the County's plan and policies relied on. The Board  
31 places these references in parentheses after each issue question.

32 <sup>229</sup> The Department of Commerce has adopted a new set of Growth Management Act guidelines, now at  
Chapter 365-196 WAC. The new guidelines became effective February 19, 2010. For purposes of this case,  
the Board applies the old guidelines, which were in effect at the time of County adoption of Ordinance 2009-  
71s.

1 of the County's Comprehensive Plan Procedures by not following readily identifiable  
2 boundary features for Rural Separator lands?

3 **Halmo 1.d.** Is the Amendment inconsistent with RCW 36.070A.030 (15), RCW  
4 36.070A.070, WAC 365-195-330, and the Mid-County Community Plan requirements  
5 to preserve the community's rural character? (citing Mid-County Community Plan  
6 Land Use Policies, [Objectives, Principles, Standards] Rural Residential, Intent and  
7 Objective 1 with its Principles and Standards as well as Rural Commercial, Intent and  
8 Objective 4 with its Principles 1 and 2; Community Character and Design Element,  
Rural Character, Objective 17.)

9 **Halmo 2.** Did Pierce County's adoption of *Amendment C-3* (Signs Graham) to Ordinance  
10 No. 2009-71s violate the goals and requirements of the GMA as follows:

11 **Halmo 2.a.** Does the Amendment fail to comply with the RCW 36.70A.0G42  
12 20 (10), the Act's environmental protection goal, RCW 36.70A.030 (15), RCW  
13 36.70A.070 (5), WAC 365-195-330, Pierce County Comprehensive Plan Goals  
14 19A.20.050, Pierce County Comprehensive Plan 19A.40, and the Graham  
15 Community Plan's Community Character and Design and Natural Environment  
16 Elements because it is inconsistent in preserving rural lands, in protecting the rural  
17 character, in protecting visual landscapes, and in assuring visual compatibility with  
18 surrounding rural areas through adequate signage control? (citing also Pierce County  
19 Comprehensive Plan 19A.40.030 RUR Objective 3 and .040 RUR Objective 4, and  
20 the Graham Community Plan's Community Character and Design Element (Goal with  
21 Objectives, Principles, Standards -- Objective 14 Principle 1 and Principle 11; Design  
22 Intent -- with Objective 15 Principle 3; Objective 19, Principle 6; Signs -- with Intent  
23 and all of Objective 20 and its Principles and Standards; Viewsheds and Aesthetics --  
24 Intent and Objective 22, Principles 1, 6, 7, and 9) and Natural Environment Element  
(Goal and Objective 27)

24 **Halmo 2.b.** Does the Amendment take action inconsistent with RCW 36.70A.020(2),  
25 the GMA sprawl reduction goal, and Pierce County Comprehensive Plan 19A.110  
26 because it results in less stringent signage controls affecting only the largely rural  
27 Graham Community Plan area? (citing Pierce County Comprehensive Plan  
19A.110.020 CO Objectives 2.A.2 and A.3 and 19A.110.040 CO Objectives 4 and 5.)

28 **Halmo 2.c.** Does the Amendment lessen support for the substantial, legitimate  
29 government interest to protect public traffic safety along highways and roadways by  
30 increasing distracting sign lighting and glare, thus making it inconsistent with the  
31 basic tenant of the Growth Management Act that land use actions should protect the  
32 public interest? (citing WAC 365-195-325 which conforms with and is consistent with  
the State's transportation goal policies RCW 47.04.280 and its companion

requirements RCW 47.04.070, RCW 47.42.020 (7) and (8), RCW 47.42, RCW 47.36.180, and WAC 468-66-050)

## FUTUREWISE

**FW 1.** By adopting *Amendment Nos. U-7 and U-8* to Ordinance No. 2009-71s, and otherwise by expanding the County's urban growth areas beyond that needed to accommodate the County's adopted population projection, has Pierce County violated GMA Planning Goals 1, 2, 5, 9, 10, and 12 and GMA Sections .040, .070, .110, .115, and .130?

**FW 2.** By adopting *Amendment No. T-6*, UGA expansion criteria, to Ordinance No. 2009-71s, without protections for working farms, specifically failing to prohibit including agricultural lands of long-term commercial significance within urban growth areas, and other violations of the Growth Management Act, has Pierce County failed to adopt comprehensive plan provisions and development regulations to conserve natural resource lands and protect them from incompatible development, failed to comply with the GMA requirements for urban growth areas, and otherwise failed to comply with GMA Planning Goals 1, 2, 5, 8, 9, 10, and 12 and with GMA Sections .040, .050, .060, .070, .110, .130, .170, and .177?

**FW 3 [Segregated and extended.]** <sup>230</sup>By adopting *Amendment No. M-23*, Monarch Custom Homes, which de-designates and rezones 20 acres from ALR to Rural 10, has Pierce County failed to adopt comprehensive plan provisions and development regulations to conserve natural resource lands and protect them from incompatible development and otherwise failed to comply with GMA Planning Goals 1, 2, 5, 8, 9, 10, and 12 and with GMA Sections .040, .050, .060, .070, .130, .170, .172, and .177?

**FW 4.** By adopting *Amendment No. U-5*, to re-designate 80 acres from ARL and R20 to EC and add the land to the urban growth area, has Pierce County failed to adopt comprehensive plan provisions and development regulations to conserve natural resource lands and protect them from incompatible development, expanded the urban growth area beyond what is needed to accommodate the county's adopted population projections, and otherwise failed to comply with GMA Planning Goals 1, 2, 5, 8, 9, 10, and 12 and with GMA Sections .040, .050, .060, .070, .110, .115, .130, .170, .172, and .177?

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<sup>230</sup> Petitioner Futurewise and Respondent Pierce County are actively engaged in settlement discussions regarding one of the Amendments, M-23, that only Futurewise appealed. Amendment M-23 is the subject of a segregation and settlement extension order. Order Segregating and Granting Settlement Extension as to Futurewise Issue 3 (May 11, 2020).